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No. 1321

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

AMERICAN BONDING COMPANY, OF BAL-
TIMORE (a Corporation),
vs. J. C. MILLS, Jr., Late Sheriff of Boise County,
Idaho,
Plaintiff in Error,
Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit
Court for the District of Idaho, Central Division.

FILED

JUN 29 1906

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*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
Plaintiff in Error,

vs.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,
Defendant in Error.

Statement of Errors, and Designation of Record to Be Printed.

To the Clerk of said Court, and to the Defendant in Error
herein, and to W. E. Borah, Esq., Attorney for De-
fendant in Error:

You will please take notice that the plaintiff in error
herein has filed its Record in this court herein, and, pur-
suant to Subdivision 7 of Rule 23 of this Court, files with
said clerk a statement of errors upon which it intends to
rely, and states said errors as follows, to wit:

I.

The Court erred as to said plaintiff in error, in over-
ruling the demurrer of said plaintiff in error to defend-
ant in error's complaint herein.

II.

The Court erred as to said plaintiff in error, in ordering
judgment to be entered in favor of the defendant in error

in evidence of the entry from the judgment docket during the examination of the witness Tucker, the full substance of whereof is as follows:

“Judgment Debtor, J. C. Mills, Jr., Sheriff Boise County, Idaho. Judgment Creditor, Ralph Cowden. Amount, \$19,195.87. Costs \$145.15. Time of entry, June 20, 1903. Page of Judgment Book, book 2, page 120.”

VII.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the papers marked Plaintiff's Exhibit “D,” offered in evidence during the examination of the witness J. C. Mills, Jr., whereof the full substance is as follows:

(1) An affidavit by George W. Hawkes as the agent and representative of the Flato Commission Company, to the effect that on November 30, 1901, at South Omaha, Nebraska, one R. L. Shaw made and delivered to said corporation his promissory note for \$10,000, and his further promissory note for \$8,626.55, together with a certain chattel mortgage for the purpose of securing said note, on 3,500 head of yearling wethers and wool, 3,500 head of ewes, their increase and wool, 3,000 head of mixed lambs and wool, describing, with the marks thereon, and further stating that the date of maturity of each of said notes is past, that no portion of the principal or interest has been paid, and that there is due to said corporation

from said Shaw on said notes and mortgages, the sum of \$18,626.55, with interest.

(2) The return of said Mills as sheriff, of said affidavit of foreclosure, wherein he states that on August 1, 1902, he took into his possession certain of the property described in said affidavit, and on August 12, 1902, sold certain of said property to the Flato Commission Company for the sum of \$14,233.50, whereof after deducting commissions, the remainder, \$13,871.59, was paid by him to said Company.

VIII.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the papers marked Plaintiff's Exhibit "E," offered in evidence during the examination of the witness J. C. Mills, Jr., whereof the full substance is as follows:

A letter from Hawley and Puckett, attorneys, to J. C. Mills, Sheriff Boise County, dated July 26, 1902, enclosing bond for \$20,000 sued on herein, and statutory affidavit and notice in a foreclosure of chattel mortgage against certain sheep, in favor of The Flato Commission Company, and requesting that the matter be attended to at once; said affidavit and notice being those referred to under Assignments Nos. V and VII hereinbefore stated.

IX.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission

in evidence of the paper marked Plaintiff's Exhibit "F," offered in evidence during the examination of the witness J. C. Mills, Jr., the full substance whereof is, a notice to said Mills as sheriff of Boise County, from the Flato Commission Company, by its agent, directing him to take into his opsession the mortgaged property described in the affidavit already referred to, and to sell the same according to law.

X.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "G," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was, an indemnity bond by said Flato Commsision Company as principal, and the American Bonding and Trust Company of Baltimore, Md., as surety, to said Mills as sheriff of Boise County, Idaho, in the sum of \$20,000.00, dated July 26, 1902, reciting that whereas by virtue of the affidavit already referred to, said sheriff was directed to take into his possession the property mortgaged by said Shaw, and to sell the same, and thereupon took into his possession certain property, and whereas upon such taking other persons or person claimed said property, and said Flato Commission Company required that said Mills as sheriff retain and sell the same, that said principal and surety

would indemnify said Mills, such sheriff, of and from all damage, expense, costs and charges, and against all loss and liability which said sheriff should sustain by reason of his taking, retention or sale of said property, said bond being that annexed to the complaint herein as exhibit "A."

XI.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the question, "Mr. Cowden afterwards brought suit against you?" asked of said witness J. C. Mills, Jr.

XII.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "H," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter by said J. C. Mills to Charles F. Neal as agent for said American Bonding and Trust Company, dated August 29, 1902, notifying him, said Neal, that suit had been brought against said Mills as sheriff, to recover said sum of \$21,-866.50 and damages for the sale of said sheep under the foreclosure already referred to.

XIII.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the remittitur from the Supreme Court during the examination of the witness J. C. Mills, Jr., which

in full substance was a remittitur from the Supreme Court of the State of Idaho, announcing the affirmance of the judgment and order denying a new trial in the case of Cowden vs. Mills, already referred to.

XIV.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "J," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter from Ralph Smith as vice-president and general attorney of the American Bonding and Trust Company of Baltimore City, to Charles F. Neal, Agent, Boise, Idaho, acknowledging receipt of letter written by Mills to Neal, already referred to.

XV.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "K," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter from said Neal as general agent, to R. W. Smith, Denver, Colorado, enclosing notice from Mills to Neal already referred to.

XVI.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "L," offered in evidence during the examination of the witness

J. C. Mills, Jr., which in full substance was a letter from Ralph W. Smith as vice-president and general attorney of the American Bonding Company of Baltimore, to W. E. Borah of Boise, Idaho, denying plaintiff in error's liability upon the indemnity bond to J. C. Mills, Jr., said bond being that annexed to the complaint herein as exhibit "A."

10 *American Bonding Company of Baltimore*

XVII.

The Court erred as to said plaintiff in error, in denying and overruling said plaintiff in error's motion to strike out such portions of the testimony of the witness J. C. Mills, Jr., as related to the giving of the bond in suit.

XVIII.

The Court erred as to said plaintiff in error, in overruling said plaintiff in error's demurrer to the evidence.

XIX.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of Ed. H. Reid, the full substance whereof was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by defendant in error Mills as sheriff, and that said bond was without consideration, and void.

XX.

The Court erred as to said plaintiff in error, in sustain-

ing defendant in error's objection to the admission in evidence of the deposition of John R. Bonson, the full substance whereof was to the effect first, that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, of the sheep alleged to have been converted by said Mills as such sheriff, second that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant.

XXI.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of O. W. Eaton, the full substance whereof was to the effect, first that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, of the sheep alleged to have been converted by said Mills as such sheriff, second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant.

XXII.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Mills as sheriff, and that said bond was without consideration, and void.

XXIII.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of James C. Dahlman as to the values of sheep therein referred to, the full substance of which said evidence so rejected was to the effect that the value of the sheep alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant, said bond being that annexed to the complaint herein as exhibit "A."

XXIV.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to said plaintiff in error's objection to said plaintiff in error's offer to prove by the testimony of J. C. Dressler, first, that Ralph Cow-

den was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed, second, that whatever interest Ralph Cowden had or acquired in the sheep in controversy was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw, third, that the judgment in the case of Cowden versus Mills was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500 and that that amount is the total amount of damage of all sorts caused in the premises, if any.

XXV.

The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to said plaintiff in error's offer to prove by the testimony of Ed Paine, first, that said Ralph Cowden was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed, second that whatever interest Ralph Cowden had or acquired in the sheep in controversy was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw, third, that the judgment in the case of Cowden vs. Mills was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and

that the true value of said sheep was at said time not in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

And said plaintiff in error, pursuant to said subdivision of said Rule, states that the following are the parts of said record which it thinks necessary for the consideration thereof :

I.

The complaint, page 1 to 6 thereof, inclusive.

II.

Demurrer to said complaint, page 13 thereof.

III.

Order overruling demurrer, pages 14 and 15 thereof.

IV.

Answer of this defendant, page 15 to 20 thereof inclusive.

V.

Petition for removal, page 51 to 56 thereof, inclusive.

VI.

Bond on removal, pages 57 and 58 thereof.

VII.

Supplemental petition for removal, page 71 to 73 thereof, inclusive.

VIII.

Order denying motion to remand, page 74 thereof.

IX.

Demurrer of this defendant, page 76 thereof.

X.

Order overruling demurrers, on page 78 thereof.

XI.

Deposition of Ed. H. Reid, page 89 to 94 thereof, inclusive.

XII.

Deposition of James C. Dahlman, page 96 to 104 thereof, inclusive.

XIII.

Depositions of O. W. Eaton and John R. Bonson, page 105 to 134 thereof, inclusive.

XIV.

Deposition of Geo. W. Hawkes, page 138 to 142 thereof, inclusive.

XV.

Transcript of testimony, and exhibits, from page 151 to 203 thereof, inclusive.

XVI.

Findings and decision, page 204 to 207 thereof, inclusive.

XVII.

Judgment, pages 208 and 209 thereof.

XVIII.

Proceedings on severance, from page 213 to 216 thereof, inclusive.

XIX.

Petition for writ of error, pages 221 and 222 thereof.

XX.

Assignment of errors, page 223 to 232 thereof, inclusive.

XXI.

Order for filing bond, pages 233 and 234 thereof.

XXII.

Order allowing writ of error, pages 235 and 236 thereof.

XXIII.

Bond on writ of error, pages 237 and 238 thereof.

XXIV.

Writ of error, page 239 thereof.

XXV.

Citation, page 240 thereof.

XXVI.

Clerk's certificate to Transcript, page 241 thereof.

NEAL & KINYON,

MORRISON & PENCE,

JESSE W. LILIENTHAL,

Attorneys for Plaintiff in Error.

Dated March 31, 1906.

[Endorsed]: 1321. In the United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, Plaintiff in Error, vs. J. C. Mills, Jr., late Sheriff of Boise County, Idaho, Defendant in Error. Statement of Errors and Designation of Record to be Printed. Filed March 31, 1906. F. D. Monekton, Clerk.

*In the United States Circuit Court of Appeals, for the
Ninth District.*

AMERICAN BONDING COMPANY OF
BALTIMORE (a Corporation,)
Plaintiff in Error,
vs.
J. C MILLS, JR., Late Sheriff of Boise
County,
Defendant in Error.

Designation of Additional Record to Be Printed.

To the Clerk of the above-named Court and to the Plaintiff
in Error and its Attorneys of Record, Neal & Kinyon,
Morrison & Pence, Jesse W. Lilienthal:

You will please take notice that the defendant in error, pursuant to subdivision 7 of rule 23 of the above court, files with said clerk a statement of additional record to be printed, to wit, all and the entire portion of the record not specified by the plaintiff in error, so as to make the record complete when printed as transmitted by the clerk of the lower court, calling especial attention to the affidavits in support of the petitions on removal and the judgment roll in the State court.

W. E. BORAH,
Attorneys for Defendant in Error.

Service admitted by copy this — day of April, 1906.

Attorneys for Plaintiff in Error.

[Endorsed]: 1321. In the United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company of Baltimore, a corporation, Plaintiff in Error, vs. J. C. Mills, Jr., late sheriff of Boise County, Idaho, Defendant in Error. Designation of Additional Record to be Printed. Filed Apr. 7, 1906. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth District.

AMERICAN BONDING COMPANY OF
BALTIMORE (a Corporation),
Plaintiff in Error,

vs.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,
Defendant in Error.

Order Extending Time to Docket Cause.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-entitled cause in this Court, be and the same is hereby enlarged, and ex-

tended from the 30th day of December, 1905, to and including the first day of March, 1906.

Dated December 28th, 1905.

JAS. H. BEATTY,
Judge.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. American Bonding Company of Baltimore, Plaintiff in Error, vs. J. C. Mills, Jr., late Sheriff, etc., Defendant in Error. Order Enlarging Time to Docket Cause. Filed Feb. 28, 1906. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

AMERICAN BONDING COMPANY OF
BALTIMORE (a Corporation),

Plaintiff in Error,

vs.

J. C. MILLS, JR.,

Defendant in Error.

Order Extending Time to Docket Cause.

Good cause appearing therefor, it is ordered that the plaintiff in error herein, the American Bonding Company of Baltimore, may have to and including April 1, 1906,

wherein to file the record herein, and docket this case with the Clerk of this Court.

WM. B. GILBERT,
Judge of said Court.

Dated February 28, 1906.

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company of Baltimore, a corporation, Plaintiff in Error, vs. J. C. Mills, Jr., Defendant in Error. Order Extending Time. Filed Feb. 28, 1906. F. D. Monckton, Clerk.

[Endorsed]: No. 1321. United States Circuit Court of Appeals for the Ninth Circuit. American Bonding Company of Baltimore, etc., vs. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho. Two Orders Extending Time to Docket Cause. Re-filed March 31, 1906. F. D. Monckton, Clerk.

In the District Court of the Third Judicial District of the State of Idaho, in and for Ada County.

J. C. MILLS, JR., Late Sheriff of Boise)
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
and THE FLATO COMMISSION
COMPANY, a Corporation Organized
and Existing Under and by Virtue of
the Laws of the State of Nebraska,

Defendants.)

Complaint.

Comes now the plaintiff, and for cause of action against the defendant alleges.

1. That the defendant the American Bonding Company of Baltimore now is and during all the times hereinafter mentioned has been a corporation organized and existing and doing business under and by virtue of the laws of the State of Maryland and doing business also in the State of Idaho; that the defendant, the Flato Commission Company, is a corporation organized and existing under and by virtue of the laws of the State of Nebraska.

2. That the plaintiff all the times mentioned in the

complaint and while performing the acts and services in said complaint referred to was the duly elected and qualified sheriff of Boise County, Idaho.

3. That on or about the first day of July, 1902, the above named plaintiff as sheriff of Boise County, at the instance and request of the above named defendant, the Flato Commission Company, and upon affidavit and notice duly filed as required by the statutes of the State of Idaho relative to the foreclosure of a chattel mortgage, took possession of certain personal property, to wit: About 2,629 head of ewes branded quarter circle G with Black paint, also about 1,645 lambs branded quarter circle G with black paint, also 268 head of mixed yearlings branded quarter circle G with black paint also branded H with red paint, said sheep being known as the Cowden sheep and being the same sheep hereinafter described and referred to in a certain bond, a copy of which is hereafter attached; that after the said plaintiff had taken possession of said sheep by the request and at the instance of the said Flato Commission Company, the said sheep and all of them were claimed by Ralph Cowden as his separate and individual property.

4. That in order that the same plaintiff might hold said sheep, retain possession of the same and made sale thereof to satisfy the mortgage of the Flato Commission Company under which the same had been taken and upon the demand and at the request of said plaintiff, the said Flato Commission Company and the said American Bonding Company of Baltimore made, executed and delivered to the plaintiff their certain bond of indemnity in writing

conditioned that the said Flato Commission Company and the said American Bonding Company of Baltimore would indemnify and save harmless the said J. C. Mills, Sheriff, from all damage, expense, cost and charges and against all loss and liability which the said sheriff, his heirs, executors or administrators should sustain for or by reason of the taking into his possession, retention and sale of said property, said property being the same property above described and which was afterwards involved in the suit in this complaint referred to. A copy of said bond showing more completely the terms and conditions thereof is hereto annexed and made a part of this complaint and referred to as Exhibit "A." That the said bond is signed and executed in the name of the American Bonding and Trust Company of Baltimore City, Maryland. That the said American Bonding and Trust Company of Baltimore City, Maryland, is the same corporation and person as the above named defendant, the American Bonding Company of Baltimore, the said company having changed its name by authority of the legislature of the State of Maryland from the American Bonding and Trust Company of Baltimore City, Maryland, to the American Bonding Company of Baltimore, the said Company sometimes executing its instruments in one name and sometimes in the other.

5. That upon the execution and delivery of said bond of indemnity the said plaintiff retained possession of said sheep and sold the same at the instance and request and under the authority of the said Flato Commission Company and the American Bonding Company of Baltimore.

6. That thereafter the said Ralph Cowden commenced

an action against this plaintiff as sheriff of Boise County, in the District Court of the Third Judicial District of the State of Idaho in and for Boise County; that thereafter the said suit was transferred for trial to Canyon County in the above-named court and district. That the said plaintiff herein appeared as defendant in said suit and contested the same and did so at the instance and request and with the full knowledge, notice and consent of the said Flato Commission Company and the American Bonding Company of Baltimore above named. That thereafter the case came duly on for trial and that such proceedings were had that upon the 17th day of June, 1903, the Court made its findings of fact and conclusions of law, deciding and holding thereby that the plaintiff was entitled to the personal property heretofore described and to the return thereof or to the value thereof amounting principal and interest, to the sum of \$19,195.87 and for costs, and that upon said findings and conclusions of law judgment by said court was duly entered wherein and whereby it was ordered, adjudged and decreed that the said Ralph Cowden have judgment against the defendant therein, plaintiff herein, J. C. Mills, Jr., sheriff, for the return of said property or for the value thereof in the sum of \$19,195.87 and for costs of suit amounting to \$145.15. That said judgment bears date June 17, 1903.

7. That thereafter an appeal was duly taken by this complainant to the Supreme Court of the State of Idaho and thereupon such proceedings were had that upon the second day of ———, 1904, the said judgment herein re-

ferred to was by the Supreme Court of the State of Idaho, duly affirmed and that said judgment remains unsatisfied and unpaid and is a liability against this defendant.

8. That by reason of said judgment as aforesaid and the affirmation of the same by the Supreme Court of the State of Idaho, this plaintiff is liable to the said Ralph Cowden in the sum of \$19,195.87, judgment aforesaid, together with costs amounting to \$145.15 with interest thereon at the rate of seven per cent per annum from June 17, 1903.

9. That the conditions of said indemnity bond, a copy of which is set forth here as Exhibit "A," had been broken and the defendants are liable to this plaintiff for the sum and amount aforesaid under and by virtue of the terms and conditions of said bond in the sum of \$19,195.87, principal and interest, and for the further sum of \$145.15 with interest on each of said amounts at the rate of seven per cent per annum from June, 17, 1903. That demand has been made of defendants for said amounts but they neglect and refuse to pay the same.

Wherefore plaintiff prays judgment against the above named defendants and each of them for the sum of \$19,341.02 with interest thereon at the rate of seven per cent per annum from June 17, 1903, for costs of suit and for all proper relief.

HARRY FISHER and
W. E. BORAH,
Attorneys for Plaintiff.

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That he is one of the attorneys in the above-entitled action, that he has read the above and foregoing complaint, knows the contents thereof and that the facts therein stated are true of his own knowledge except as to matters therein stated to be on information or belief and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the plaintiff herein is absent from the county where the attorney resides and where the suit is filed.

W. E. BORAH.

Subscribed and sworn to before me this 12th day of
May, 1904.

[Seal]

CLINTON C. SIGGINS,
Notary Public.

Exhibit "A."

**INDEMNITY BOND OF FORECLOSURE OF CHAT-
TEL MORTGAGE.**

Know all men by these presents, that we, the Flato Com-
mission Company of Omaha, Nebraska, as principal, and
the American Bonding and Trust Company of Baltimore,
Md., as surety, are each held and firmly bound unto J. C.
Mills, sheriff of Boise County, State of Idaho, in the sum
of (\$20,000.00) twenty thousand dollars, lawful money of

the United States to be paid to J. C. Mills, sheriff, or his certain attorney, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals and dates this 26th day of July, 1902.

Whereas under and by virtue of an affidavit on the foreclosure of a chattel mortgage given by one R. L. Shaw to the above named Flato Commission Company, and the notice required by the statutes of Idaho for the foreclosure of chattel mortgages, directed and delivered to the said J. C. Mills, sheriff of Boise County, the said sheriff was directed to take into his possession the said mortgaged property and to sell the same, and the said sheriff did thereupon take into his possession the following described property, to wit: Between six and seven hundred sheep branded with \widehat{G} (quarter circle G.)

And whereas, upon the taking of said sheep, other persons or person claimed said property as their own, and

Whereas, the said Flato Commission Company notwithstanding such claim, requires that the said J. C. Mills, sheriff, that he shall retain said property in his possession and sell the same,

Now, therefore, the condition of this obligation is such that if the said Flato Commission Company of Omaha, and the American Bonding and Trust Company of Baltimore City, Md., sureties, their heirs, executors, administrators or successors, or either of them shall well and truly indemnify and save harmless the said J. C. Mills, sheriff,

his heirs, executors and administrators, of and from all damage, expense, costs and charges and against all loss and liability which he, the said sheriff and his heirs, executors or administrators shall sustain or in any wise be put to for the reason of the taking into his oppsession, retention and sale of said property, claimed as aforesaid, then the above obligation to be void; otherwise to remain in full force and virtue.

THE FLATO COMMISSION COMPANY,
By ED H. REID,

[Seal]

Director, Agent and Representative, Principal.
THE AMERICAN BONDING AND TRUST COM-
PANY OF BALTIMORE CITY,

By H. E. NEAL,
Vice-President.

Attest: CHAS. F. NEAL.
Asst. Secty.

J. C. Mills, Jr.

[Title and Caption Omitted.]

Summons.

The State of Idaho Sends Greeting to the Above-named
Defendants:

You are hereby required to appear in an action brought against you by the above named plaintiff in the District Court of the Third Judicial District, State of Idaho, in and for the County of Ada, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or if served out of this county, but in this district, within twenty days; otherwise forty days. The said action is brought to recover from the defendants the sum of \$19,341.02 with interest thereon at the rate of 7 per cent per annum from June 17, 1903, being the amount due plaintiff on a certain indemnity bond made and entered into between the defendants thereto, to indemnify and save harmless the said plaintiff, in certain acts as sheriff of Boise County, Idaho, in taking into his possession, retaining and selling certain property mentioned in the complaint; for which sum this plaintiff is liable under the judgment of the District Court of the Third Judicial District of Idaho, in and for Canyon County, and the affirmation of the same by the Supreme Court of Idaho, in the case of Ralph Cowden vs. J. C. Mills, Jr., for the costs of this suit and for all proper relief; all of which more fully appears in plaintiff's complaint filed herein, a copy of which is served herewith, hereby referred to, and made a party hereof.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff, will take judgment for the sum demanded in the complaint, to wit: \$19,341.02 with 7 per cent interest thereon from June 17, 1903, and costs of suit.

Given under my hand and the seal of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada this 12th day of May, in the year of our Lord one thousand nine hundred and four.

[Seal]

W. L. CUDDY,
Clerk.

By Otto F. Peterson,
Deputy Clerk.

W. E. BORAH and
HARRY FISHER,
Attorneys for Plaintiff.

Filed May 20, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. W. E. Borah and Harry L. Fisher, Attys. for Plaintiff. Filed Sep. 12, 1904. A. L. Richardson, Clerk.

Sheriff's Office,
County of Ada,—ss.

I hereby certify that I received the annexed summons on the 12th day of May, 1904, and personally served the same upon American Bonding Company of Baltimore a corporation organized and existing under and by virtue of the laws of the State of Maryland, and the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, by delivering to and leaving with Charles F. Neal, statutory agent of said American Bonding Company and Flato Commission Company in the County of Ada, State of Idaho, on the 17th day of May, 1904, a copy of said sum-

mons, together with a copy of the complaint in the action referred to in said summons.

Dated this 20th day of May, 1904.

J. D. AGNEW, JR.,
Sheriff of Ada County,
By Elias Marsters,
Deputy.

Sheriff's fees: \$2.35.

[Title and Caption Omitted.]

Notice of Petition for Removal.

To W. E. Borah and Harry Fisher, Attorneys for Plaintiff:

You will please take notice that on the petition and bond, and the affidavit of Charles F. Neal, copies of which are herewith upon you served, the originals of which have been filed in the office of the clerk of the District Court for the Third Judicial District of the State of Idaho, in and for Ada County, and upon the summons, appearance and pleadings in said action, a motion will be made by the undersigned, on the 28th day of May, A. D. 1904, at two o'clock P. M. or as soon thereafter as counsel can be heard, at the courtroom in the courthouse in the said county of Ada, and will move that the said Court grant the said petition, and that said bond be accepted, and that said Court proceed no further in this suit.

NEAL & KINYON,
Attorneys for Defendant.

Boise, Idaho, May 27th, 1904.

Due service of the within notice, and copies referred to herein, accepted this 27th day of May, 1904, without waiver of any rights in the premises.

W. E. BORAH,
Attorney for Plaintiff. -

Bond on Removal.

Know all men by these presents, that we, the American Bonding Company of Baltimore, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and having a principal place of business in Baltimore, Maryland, as principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at Boise City, in Ada County, State of Idaho, as surety, are held and firmly bound unto J. C. Mills, Jr., late sheriff of Boise County, Idaho, in the penal sum of five hundred (\$500.00) dollars for the payment whereof, well and truly to be made unto the said J. C. Mills, Jr., late sheriff of Boise County, Idaho, his successors and assigns we bind ourselves, our and each of our successors, representatives and assigns, jointly and severally firmly by these presents.

Upon these conditions, that, whereas, the said American Bonding Company of Baltimore, having petitioned the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, Idaho, held in and for the County of Ada aforesaid, for the removal of a certain cause therein pending, wherein the said J. C. Mills, Jr., late sheriff of Boise County, Idaho, is plaintiff, and the American Bonding Company of Baltimore, a corporation

organized and existing under and by virtue of the laws of the State of Maryland; and the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, are defendants, to the Circuit Court of the United States for the District of Idaho,

Now, if the said American Bonding Company of Baltimore, shall enter in the said Circuit Court of the United States on the first day of its next session, a copy of the records in said suit, and shall well and truly pay all costs that may be awarded by the said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

In witness whereof the parties hereto have hereunto set their hands and seals this 27th day of May, A. D. 1904.

[Corporate Seal]

AMERICAN BONDING COMPANY OF BALTI-
MORE,

Principal.

By CHARLES F. NEAL,

Gen. Agt. and Atty.

THE UNITED STATES FIDELITY AND
GUARANTY CO.

By J. T. PENCE and
CLAUDE H. ROBERTS,
Their Attorneys in Fact.

The foregoing 2 pages consisting of copy of notice of petition for removal, removal bond accompanying same, are in the original bound in two separate wrappers each endorsed as follows: (Omitting Title of Case and Caption.) No. ——. “Notice of Petition for Removal,” “Petition for Removal,” and “Undertaking.” “Filed May 27, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Filed September 12, 1904. A. L. Richardson, Clerk.”

[Title and Caption Omitted.]

Demurrer.

The defendant, the American Bonding Company of Baltimore, demurs to plaintiff’s complaint on the following grounds:

1. That the plaintiff has not legal capacity to sue.
2. That there is defect of parties defendant, for the reason that there is no service of summons upon the defendant, the Flato Commission Company.
3. That the complaint does not state facts sufficient to constitute a cause of action.

THE AMERICAN BONDING COMPANY OF
BALTIMORE,

By NEAL & KINYON,
Its Attorneys.

Due service of the within demurrer, with copy, accepted this 27th day of May, 1904.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: (Omitting Title and Caption.) Demurrer. Filed May 27, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk. Neal & Kinyon, Attys. for Defendants. Filed Sep. 12, 1904. A. L. Richardson, Clerk.

— — — —

[Title and Caption Omitted.]

Order Remanding Cause.

On this day was announced the decision of the Court upon the motion to remand this cause heretofore argued and submitted, to the effect, that said motion be sustained and ordered that the above-entitled cause be and the same is hereby remanded to the District Court of the Third Judicial District of the State of Idaho in and for the County of Ada.

It is further ordered that the original papers herein transmitted to this Court by the District Court aforesaid be returned to the said District Court, together with the Plea of Jurisdiction filed in this Court by the Flato Commission Company.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of Order remanding cause No. 249, J. C. Mills, Jr., late sheriff, etc., vs. American Bonding Company of Baltimore, et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court in said district this 22d day of September, 1904.

[Seal]

A. L. RICHARDSON,
Clerk.

By----- Deputy Clerk.

[Endorsed]: Order Remanding Cause. Filed Sept 22d, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.

[Title and Caption Omitted.]

Order Overruling Demurrer.

The demurrer in the above cause having been argued and taken under advisement, the same is this day overruled. It is therefore ordered and adjudged that the demurrer in the above-entitled cause be and the same is hereby overruled.

GEO. H. STEWART,
Judge.

[Endorsed]: Order Overruling Demurrer. Filed Nov. 26, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.

[Title and Caption Omitted.]

Stipulation Extending Time to File Answer.

It is stipulated and agreed that the defendant, the American Bonding Company, may have until Monday the 12th

day of December, 1904, to file and serve its answer herein.

W. E. BORAH,
Attorney for Plaintiff.

Stipulation. Filed Feby 7th, 1905. W. L. Cuddy, Clerk.
By Otto F. Peterson, Deputy Clerk.

[Title and Caption Omitted.]

Answer.

Comes defendant, the American Bonding Company of Baltimore, and for its separate answer herein, admits, alleges and denies as follows:

I.

Admits the allegations of paragraph 1 and 2 of said complaint.

II.

Answering paragraph 3 this defendant admits, that defendant the Flato Commission Company, on or about the 24th day of July, 1902, did file with plaintiff as sheriff of Blaine County, Idaho, an affidavit and notice in due form of law as required by the Statutes of the State of Idaho, relative to the foreclosure of chattel mortgages under the process of "Notice and sale," admits the execution of a bond of which the copy annexed to said complaint is a substantial copy. Further says, that this defendant has not information or belief sufficient to enable it to answer the other allegations of paragraph 3, to wit: That under and by virtue of the affidavit and notice so executed by said Flato Commission Company, plaintiff took possession of 5469 head of sheep or any other number of sheep, branded

as in said paragraph set out, or that all or any of said sheep were claimed by Ralph Cowden or by any other person as his separate and individual property, and therefore denies each and all of said allegations, and further alleges that if any sheep were taken by virtue of said Writ which this defendant denies, they were the property of R. L. Shaw.

III.

Answering paragraph 4 of said complaint this defendant admits the signing of the bond therein mentioned, and further answering denies that said bond was made, executed and delivered for the purpose in said paragraph set out, to wit, in order that plaintiff might hold said sheep, retain possession of the same and make sale thereof to satisfy the mortgage of the Flato Commission Company.

Further answering said paragraph 4, this defendant alleges the facts as to the execution of the same to be as follows: That when said affidavit and notice as mentioned by plaintiff were delivered to plaintiff by the Flato Commission Company for service, in the manner provided by law, to wit, by levy, advertisement and sale, the plaintiff declined to serve the same by levying and taking into his possession the personal property therein described, or do any other thing whatever by law of him required until he had first been indemnified by defendant, the Flato Commission Company, with an indemnity bond, conditioned as in paragraph 4 set out.

That thereafter defendant, the Flato Commission Company, in order that it might have and receive at the hands of the said plaintiff, sheriff as aforesaid, the service and

duty by him owing in the premises to the said Flato Commission Company, did, on said sheriff's demand, and refusal to act unless and until so indemnified, procure to be executed and delivered to the plaintiff as sheriff aforesaid a bond of indemnity conditioned in manner and form as aforesaid required by said plaintiff; that is to say, as in said paragraph 4 set out. That said bond of indemnity was not voluntary but was coerced and extorted from said Flato Commission Company without authority of law, and in violation of law, and was so executed solely in order that said Flato Commission Company might require and have at the hands of plaintiff as sheriff aforesaid service and duty which he by law was required to render to said Flato Commission Company upon the payment or tender of his lawful fees therefor, which fees were then and there tendered and paid, and said Flato Commission Company was entitled to said service without any other or further requirement or demand whatsoever on the part of said plaintiff, sheriff as aforesaid. That said bond was taken by said plaintiff as sheriff aforesaid under color of his office as sheriff as aforesaid and is wholly unauthorized by law and is wholly without consideration and is void and illegal, wherefore, this defendant ought not to be charged and holden on the same.

IV.

Answering paragraph 5 defendant denies that said bond was executed for the consideration of the retention of possession of said sheep by plaintiff, as sheriff aforesaid; denies that said sheep were levied upon at the instance or request, or under the advice or authority of this defendant;

and further answering alleges the facts with reference to the surroundings of the execution and giving of said bond are as set forth in paragraph 4 of this answer.

V.

Answering paragraph 6 of said complaint, this defendant says that he has not sufficient information or belief to enable it to answer the allegations of paragraph 6; that one Ralph Cowden had commenced an action against plaintiff as sheriff of Blaine County, Idaho, and had recovered judgment in the District Court of the Third Judicial District of Idaho, in and for Canyon County, Idaho, for the sum of \$19,195.87, and for costs amounting to \$145.00 and wherein it was ordered and adjudged that said Cowden have a return of the property described in said affidavit and notice, and so as alleged, claimed by said Cowden, or in lieu thereof his damage in the said sum of \$19,195.87 and costs in the sum of \$145.00 nor of any other judgment for return of property or damages or costs in said matters, nor of the affirmance of any such judgment, or any judgment in the premises, on appeal in the Supreme Court of Idaho. Nor of the fact of plaintiff herein being liable to Ralph Cowden, in the sum as in said paragraph 6 alleged or any other sum or sums of money by reason of such alleged judgment; nor of there being any judgment as alleged by plaintiff growing out of the matters alleged in said complaint, and for this reason denies the same.

Further answering said paragraph 6 this defendant denies, that plaintiff herein appeared in any such alleged suit, and contested the same at the instance or at the request, or with the full knowledge or any knowledge, or

with notice to, or with the consent of, or by the advice of this answering defendant.

VI.

Answering paragraph 7 of the complaint herein, this defendant denies, that the conditions of said indemnity bond have been broken; denies that this defendant is liable to plaintiff because of the execution of said alleged bond. and by virtue of the terms and conditions thereof in the sum of \$19,195.87, principal and interest, and the further sum of \$145.00 costs, with interest on said amounts as in said paragraph 7 alleged or in any other sum or sums.

VII.

Answering the allegations of paragraph I of the second cause of action of plaintiff's complaint, adopting the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 7 of first cause of action as a part of the second cause of action, this defendant adopts his answer to the aforesaid seven paragraphs comprising the first cause of action as fully as though they were fully in this paragraph repeated and set forth.

VIII.

Answering the allegations of paragraph 2 of second cause of action, this defendant says that it has not information or belief sufficient to enable it to answer the allegations of said paragraph 2, to wit: That plaintiff in contesting said alleged action, referred to in the first cause of action set forth in said complaint, has paid out, contracted for and become liable for costs and expenses in traveling and attorneys' fees in the total sum of \$19,341.02 as in said paragraph 2 set out, or any part thereof, and therefore, denies the same.

Second Defense.

For a further and second defense this defendant says that it adopts the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of its answer herein as fully as though herein fully set out, and says that under said facts the bond sued on in this action is without valid consideration, was coerced and extorted from defendant, the Flato Commission Company, was so taken and required without authority of law; and contrary to both the statute and the policy of the law, and plaintiff is not entitled to recover thereon against this defendant.

Third Defense.

For a third and further defense, this defendant says that the complaint herein does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

Wherefore this answering defendant asks that this action be dismissed as against it, and that it recover its costs herein expended.

NEAL & KINYON,

Attorneys for American Bonding Company.

State of Idaho,

County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys in the above-entitled action for defendant, the American Bonding Company of Baltimore, that he has read the foregoing answer, knows the contents thereof, and that the facts therein stated are true of his

own knowledge except as to the matters therein stated to be on information and belief, and, as to those matters he believes them to be true. That affiant makes this affidavit for the reason that defendant, the American Bonding Company of Baltimore, is a corporation and absent from the County where the attorney resides and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 12th day of December, A. D. 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: Answer. Filed Dec. 12, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.

[Title and Caption Omitted.]

Motion to Quash Service of Summons.

Comes now the defendant, The Flato Commission Company, above named and specially appearing for the purposes of this motion, and for no other purpose, moves to set aside and quash the service of the summons herein upon this defendant, upon the grounds and for the reasons:

1. That the pretended service of summons in this cause upon this defendant is not a legal or proper service of summons, or a service at all, in this: That Charles F. Neal mentioned in the return of the sheriff herein as the person upon whom said service was made in behalf of this defendant, and as the statutory agent thereof, was not and

is not, and never was the agent or representative, either statutory or otherwise, of this defendant, and has never at any time acted as such, or been appointed as such agent or representative under the laws of the State of Idaho, or otherwise, as shown by the affidavits of Charles F. Neal and James C. Dahlman, and the certificate of the Secretary of the State of Idaho, a copy of each of which is herewith served and made a part hereof.

2. That this motion is based upon said summons, the return of the sheriff, the affidavits of Charles F. Neal and James C. Dahlman, attached to the Plea to the jurisdiction filed herein and the certificate of the Secretary of the State of Idaho, the originals of which are filed herein, and a copy of which is herewith served.

HAWLEY, PUCKETT & HAWLEY,
Attorneys for the Flato Commission Company, a Corporation.

[Title and Caption Omitted.]

Affidavit of Charles F. Neal.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn according to law, deposes and says:

That during the day May 17, A. D. 1904, at my offices in the Sonna Building, and in room 305 of said Building, Boise, Idaho, Elias Marsters, a then deputy sheriff of Ada County, Idaho, served on me one copy of summons and one copy of complaint in the case of J. C. Mills, late sheriff

of Boise County, Idaho, plaintiff, vs. American Bonding Company of Baltimore, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, and the Flato Commission Company, a corporation, organized and existing under and by virtue of the laws of the State of Nebraska; also one copy of summons and one copy of complaint in the case of J. C. Mills, late sheriff of Boise County, Idaho, plaintiff against the same defendants which cases were then pending in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County.

On this particular date I was the duly authorized statutory agent of the American Bonding Company of Baltimore, having been appointed under the provisions of section 2653 of the Revised Statutes of Idaho as amended by an act approved March 10, 1903, and my appointment having been filed as required by law.

Mr. Elias Marsters first served the papers on me against the American Bonding Company of Baltimore, of which I acknowledged service in each of the above entitled cases for the American Bonding Company of Baltimore. He then attempted to serve on me the copies of two summons and complaint against the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska as set out in the complaints in these actions. I then and there told deputy sheriff Elias Marsters that I was not the statutory agent of the Flato Commission, that I never had been the statutory agent of the Flato Commission Company, nor had I ever represented the Flato Commission Company in any ca-

capacity. Mr. Elias Marsters then asked me if I knew who was the statutory agent of the Flato Commission Company, to which question I answered that I did not know, but that as Messrs. Hawley & Puckett, attorneys of this City, had heretofore represented to my personal knowledge the Flato Commission Company as their attorneys, in other suits, that they, Hawley & Puckett, could probably inform him who the statutory agent for this State is. Mr. Elias Marsters, deputy sheriff, left no papers with me other than one copy of summons and one copy of complaint in each of the cases hereinabove described against the American Bonding Company of Baltimore, Maryland.

The foregoing copy of summons and complaint in the case of J. C. Mills, Jr., vs. American Bonding Company of Baltimore, et al., and the copy of summons and complaint of William Finney vs. American Bonding Company of Baltimore, et al., which were served on me as statutory agent of the American Bonding Company, were the only papers served on me, and the only papers left with me on the date in question, or at any other time by the said Elias Marsters, or any other person in connection with process in these cases.

And further affiant deposes and says that he has personally made a diligent search of the records in the office of the Secretary of State of the State of Idaho, and that he failed to find that the Flato Commission Company, a corporation organized under the laws of the State of Nebraska, and one of the defendants herein, had filed any authorization of statutory agent under the provisions of section 2653 of

the Revised Statutes of the State of Idaho as amended by an act approved March 10, 1903, or has it filed any papers whatever in the said office.

And further affiant saith not.

CHARLES F. NEAL.

Subscribed and sworn to before me this 31st day of January, A. D. 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

Certificate of Secretary of State.

STATE OF IDAHO.

OFFICE OF THE SECRETARY OF STATE.

I, Will H. Gibson, Secretary of the State of Idaho, and custodian of the records of corporations, do hereby certify: that I have made diligent search of the records in my office, and fail to find the

Flato Commission Company
a corporation reputed to be organized under the laws of the State of Nebraska, has complied with section 2653 of the Revised Statutes of the State of Idaho, as amended by an Act Approved March 10th, 1903, by filing in this department the articles of incorporation duly certified to by the proper authorities, and an instrument designating statutory agent and principal place of business within this State.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State.

Done at Boise City, the Capital of Idaho, this 27th day of January, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America, the one hundred and twenty-ninth.

[Seal]

WILL H. GIBSON,
Secretary of State.

Motion to Quash.

Service accepted and motion waived.

W. E. BORAH,
Atty. for Pltff.

[Endorsed]: Filed Feby. 1st, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Hawley, Puckett & Hawley, Attys. for Flato Com. Co. Defendants.

J. C. MILLS,

vs.

AMERICAN BONDING CO. et al.

and

WILLIAM FINNEY,

vs.

AMERICAN BONDING CO. et al.

} Civil Trial No. 25.

} Civil Trial No. 26.

Minutes of Court.

In these cases the motion of the defendant the Flato Commission Co. to quash service of summons as to said Flato Commission co., were sustained. Whereupon the

defendant American Bonding Co. presented its motion for the removal of the cases to the United States Court. The Court declined to rule on the motion for removal till some action is taken in the matter by the United States Court. Counsel for the plaintiffs duly excepted to the ruling of the Court in sustaining the motions of the defendant the Flato Commission Co. to quash services of summons as to said Flato Commission Co.

State of Idaho,

County of Ada,—ss.

I, W. L. Cuddy, clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing is a true and complete copy of the orders of the Court, made in the above-entitled cases on February 4, 1905, as the same appears of record in Journal "K" of the District Court, at page 111.

Witness my hand and the seal of said Court this 7th day of February A. D. 1905.

[Seal]

W. L. CUDDY,
Clerk District Court Ada County, Idaho.

By Otto F. Peterson,
Deputy.

[Title and Caption Omitted.]

State of Idaho,

County of Ada,—ss.

I, W. L. Cuddy, Clerk of the District Court in and for Ada County, Idaho, hereby certify, that the original summons issued herein on the 13th day of May, 1904, is the

only summons that had been issued out of my office at the time of the quashing of the service of summons as to the Flato Commission Company, defendant in the above-entitled action, and that no alias summons had issued out of said court at the time of the filing of petition and bond for removal in this cause under date of February 4, 1904.

[Seal]

W. L. CUDDY,
Clerk of District Court,
By Otto F. Peterson.

— — —

[Title and Caption Omitted.]

**Petition for Removal of American Bonding Company
of Baltimore.**

Your petitioner, the American Bonding Company of Baltimore, respectfully shows to this Honorable Court, that it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees; and two (2) that the controversy herein is between citizens of different states; that the plaintiff was at the time of the beginning of this action, and still is, a citizen of the State of Idaho, residing in Boise County in said State; that your petitioner, the American Bonding Company of Baltimore, was, at the commencement of this action, and still is, a citizen of the State of Maryland, and of no other State, residing at Baltimore City, in said State; (3) that the Flato Commission Company, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of

the State of Nebraska, and of no other State, residing at South Omaha in said State; and that your petitioner, the American Bonding Company of Baltimore, desires to remove this suit before the trial thereof, into the next Circuit Court of the United States to be held in the District of Idaho, Central Division.

II.

Your petitioner, the American Bonding Company of Baltimore, further states that the Flato Commission Company has not now, and has never had, a statutory agent for the purpose of service of summons, as required by section 2653, Revised Statutes of 1887, and acts amendatory thereof; and further represents and states to this court upon information and belief that the Flato Commission Company is not now, nor has it for more than two years last past, and since long prior to the beginning of action herein, been doing any business of any kind whatever in the State of Idaho, and has no resident agents or representatives therein, and has had no agents or representatives within the State of Idaho since long prior to the beginning of suit herein upon whom service of summons could be had, which fact has been well known to plaintiff herein, as this petitioner is informed and believes, and therefore alleges on information and belief. Your petitioner, the American Bonding Company of Baltimore, further alleges that the return of service of summons in this case as served upon Charles F. Neal as statutory agent of the Flato Commission Company is false and untrue and was made, as this petitioner is informed and believes, and therefore alleges on information and belief, made fraudu-

lently, falsely and corruptly, with the intent and for the purpose of defeating the jurisdiction of the Circuit Court of the United States, and prevent a removal of said cause by this petitioner. Your petitioner alleges that in truth and in fact no service of summons was made upon Charles F. Neal as statutory agent of the Flato Commission Company, and that the return herein of service upon said Charles F. Neal as statutory agent of the Flato Commission Company is false and untrue, and was made and caused to be made for the sole purpose and with the intent of preventing and defeating the right of this petitioner, the American Bonding Company of Baltimore, to remove this cause into the Circuit Court of the United States, for the District of Idaho, Central Division.

III.

Your petitioner states further that it heretofore, on the 27th day of May, 1904, and within the time allowed by law, filed a petition for removal of this cause to the United States Circuit Court for the District of Idaho, Central Division, and that said cause was removed to said Court, and that, thereafter, on or about the 13th day of September, 1904, said cause was, by the Judge of the said Circuit Court of the United States within and for the State of Idaho, remanded to the District Court of the Third Judicial District of the State of Idaho in and for Ada County, for the reason that it appeared that there was in the record a service of summons upon Charles F. Neal as statutory agent of defendant Flato Commission Company regularly upon its face, and such defendant the Flato Commission Company had not joined in the removal of said cause, and

for this reason said cause was held not to be a removable cause at said time and said cause was remanded to this Court for further proceedings; further that on the 4th day of February, 1905, upon the application of the Flato Commission Company, the said Flato Commission Company appearing for the sole purpose of quashing the service of summons so as aforesaid returned as made by serving summons upon the said Charles F. Neal as and for the duly authorized statutory agent of said defendant the Flato Commission Company, and, on the said 4th day of February, 1905, said Flato Commission Company was dismissed from said cause and said service of summons quashed and this cause is for the first time pending as against defendant, the American Bonding Company of Baltimore solely. In support of this application for removal petitioner refers to and makes a part hereof the following, to wit, the application for removal filed by petitioner under date of May 27th, 1904, in this Court, the plea to the jurisdiction of the United States Circuit Court filed by the Flato Commission Company in the United States Court and returned with the papers to this Court, the motion to quash service of summons as to the Flato Commission Company, filed by the Flato Commission Company herein with affidavits, certificates and exhibits attached to said several papers and therein referred to. And your petitioner offers herewith a bond with good and sufficient surety conditioned according to law, for its entering in the Circuit Court of the United States for the District of Idaho, being the proper district, on the first day of its next

session, a copy of the records in this suit, and for paying all costs that may be awarded by said Court if said Court shall hold that this is wrongfully and improperly removed thereto; and your petitioner prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept such surety bond, and to cause the record herein to be removed to the said Circuit Court of the United States for the District of Idaho, and he will ever pray.

AMERICAN BONDING COMPANY OF BAL-
TIMORE,

By NEAL & KINYON,

Its Attorneys.

State of Idaho,

County of Ada,—ss.

B. F. Neal, being duly sworn, deposes and says: That he is one of the attorneys for petitioner in above-entitled action; that he has read the above and foregoing petition for removal, knows the contents thereof, and that the facts stated thereon are true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the petitioner herein is absent from the county where the attorney resides and where the suit was filed.

B. F. NEAL.

Subscribed and sworn to before me this 4th day of February, 1905.

[Seal]

W. L. CUDDY,
Clerk District Court,
By Otto F. Peterson,
Deputy.

[Endorsed]: (Omitting title and caption.) Filed Feb'y 4, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

[Title and Caption Omitted.]

Bond on Removal.

State of Idaho,
County of Ada,—ss.

Know all men by these presents: That we, the American Bonding Company of Baltimore, Maryland, and The Flato Commission Company, a corporation organized and existing under the laws of the State of Nebraska, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are holden and stand firmly bound unto J. C. Mills, Jr., in the penal sum of three hundred (\$300.00) dollars, for the payment whereof well and truly to be made unto the said J. C. Mills, Jr., his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns jointly and firmly by these presents.

Upon condition nevertheless, that whereas the said American Bonding Company, and The Flato Commission

Company have filed their petition in the District Court of the 3d Judicial District in and for Ada County, Idaho, for the removal of a certain cause therein pending, wherein the said J. C. Mills, Jr., is plaintiff and the said American Bonding Company and the Flato Commission Company are defendants, to the United States District Court, for the District of Idaho, Central Division.

Now, if the said American Bonding Company and the Flato Commission Company shall enter in the said District Court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we, the said American Bonding Company, and the Flato Commission Company, and The United States Fidelity and Guaranty Company have hereunto set our hands and seals this 4th day of February, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By NEAL & KINYON,

Attys.

[Seal]

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By CLAUDE H. ROBERTS,

Its Attorney in Fact.

[Endorsed]: Bond for Removal. Filed Feby. 4, 1905.
W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

[Title and Caption Omitted.]

Alias Summons.

The State of Idaho Send Greetings to the Above Named Defendants.

You are hereby required to appear in an action brought against you by the above named plaintiff in the District Court of the Third Judicial District, State of Idaho, in and for the County of Ada, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or if served out of this county, but in this district, within twenty days; otherwise within forty days. The said action is brought to recover from the defendants the sum of \$19,341.02 with interest thereon at the rate of 7 per cent per annum from June 17, 1903, being the amount due plaintiff, on a certain indemnity bond made and entered into between the defendants hereto, to indemnify and save harmless the said plaintiff, in certain acts as sheriff of Boise County, Idaho, in taking into his possession retaining and selling certain property mentioned in the complaint: for which sum this plaintiff is liable under the judgment of the District Court of the Third Judicial District of Idaho, in and for Canyon County, and the affirmation of the same by the Supreme Court of Idaho, in the case of Ralph Cowden vs J. C. Mills, Jr.; for the costs of this suit and for all proper relief; all of which

more fully appears in plaintiff's complaint filed herein, a copy of which is served herewith, hereby referred to, and made a part hereof.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment for the sum demanded in the complaint, to wit: \$19,341.02, with 7 per cent interest thereon from June 17, 1903, and costs of suit.

Given under my hand and the seal of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada this 4th day of Feb, in the year of our Lord one thousand nine hundred and five.

[Seal]

W. L. CUDDY,
By Otto F. Peterson,
Deputy Clerk.

W. E. BORAH and
HARRY FISHER

Attorneys for Plaintiff.

[Endorsed]: Alias Summons. Filed Feby. 7, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. W. E. Borah and Harry Fisher, Attorneys for Plaintiff.

State of Idaho,
County of Ada,—ss.

I, C. C. Havird, sheriff of Ada County, Idaho, do hereby certify that I received the annexed alias summons on the 3d day of February, 1905; that after receiving the same I made inquiry and investigation and found that the Flato Commission Company is a foreign corporation organized and existing under and by virtue of the laws of the State

of Nebraska and that it has not filed its articles of incorporation in the State of Idaho or designated any person as agent upon whom to serve process of summons and has not complied with the laws of the State of Idaho relative to foreign corporations doing business in the State of Idaho; and I further ascertained that the said company or corporation, the Flato Commission Company, as such corporation transacted business in the Ada County, State of Idaho, and that upon the 7th day of February, 1905, I served the said Flato Commission Company, a corporation by serving William Cuddy, Auditor of Ada County, Idaho, an alias summons by delivering to him personally a true copy of this alias summons and a copy of the complaint herein.

C. C. HAVIRD,
Sheriff.

Boise City, Idaho, February 4, 1905.

Eleventh Judicial Day of the District Court of the Third Judicial District of the State of Idaho, in and for Ada County. Present: Hon. GEO. H. STEWART, District Judge, and the Officers of the Court.

Whereupon, among others, the following proceedings were had, to wit:

J. C. MILLS,

vs.

AMERICAN BONDING CO. et al.,

and

WILLIAM FINNEY,

vs.

AMERICAN BONDING CO. et al.,

Civil Trial No. 25

Civil Trial No. 26.

Trial.

In these cases the motion of the defendant, the Flato Commission Co., to quash service of summons as to said Flato Commission Co. were sustained. Whereupon the defendant American Bonding Co. presented its motions for the removal of the cases to the United States Court. The Court declined to rule on the motions for removal till some action is taken in the matter by the United States Court. Counsel for the plaintiff duly excepted to the ruling of the Court in sustaining the motions of the defendant the Flato Commission Co to quash service of summons as to said Flato Commission Co.

WILLIAM FINNEY,

vs.

Civil Trial No. 26.

AMERICAN BONDING CO et al.,

February 17th, 1905.

This cause came on for trial before the court and a jury, W. E. Borah Esqr., appearing as counsel for plaintiff, and Messrs Neal & Kinyon appearing as counsel for the defendant, the American Bonding Co.

Counsel for defendant at this time, after the case was called for trial, but before the jury was impanelled, objected to going to trial at this time and moved the court for a continuance of said cause till February 21, 1905, filing an affidavit in support of said motion. Whereupon the Court overruled the motion for continuance, to which ruling of the Court counsel for defendant excepted.

The clerk under the direction of the Court proceeded to draw from the jury box the names of twelve persons,

one at a time, written on separate slips of paper and folded, to serve as a jury in this cause. The following persons, whose names were drawn from the jury-box, were sworn on voir dire, examined, passed for cause and accepted by counsel for both plaintiff and defendant, and were sworn by the clerk to well and truly try said cause and a true verdict render therein, according to the law and the evidence, to wit: Frank McMillam, S. F. Russell, Green C. Patton, N. W. Johnson, George Stewart, James L. Yost, B. L. Pilgrim, G. W. Bredehoft, Frank Davisson, John M. Johnson, John Miller and W. Scott Anderson.

A statement of the cause was made to the jury by counsel for plaintiff.

John A. Tucker, William Finney, Ralph Cowden and Chas. F. Neal were called, sworn and examined as witnesses on the part of plaintiff, documentary and record evidence being also introduced by plaintiff, and here plaintiff rests.

Counsel for the defendant, the American Bonding Co., at this time moved the Court to instruct the jury to return a verdict in favor of the defendant, for the reason that the evidence introduced was not sufficient to warrant a verdict in favor of plaintiff, which motion was overruled by the Court, to which ruling of the court counsel for defendant excepted.

Defendant declining to introduce any evidence, the cause was submitted to the jury for decision.

The Court after instruction the jury in writing, placed them in the charge of M. E. Duncan, a bailiff first duly sworn, and they retired to deliberate upon their verdict.

Now on the same day came the jury into Court, counsel for the plaintiff and defendant being present, the jury was called, and all found present.

The Court asked the jury if they had agreed upon a verdict, and they through their foreman answered that they had, and presented to the court their written verdict in the words and figures following, to wit :

“In the District Court of the Third Judicial District of State of Idaho, in and for Ada County.

WILLIAM FINNEY,

Plaintiff,

vs.

AMERICAN BONDING CO. OF BAL-
TIMORE, et al.,

Defendants.

We, the jury in the above-entitled case, find for the plaintiff and assess his damages against the American Bonding Company of Baltimore at the sum of \$10,646.50.

JOHN M. JOHNSON,

Foreman.”

The verdict was recorded in the presence of the jury and then read to them and they each affirmed the same.

State of Idaho,

County of Ada,—ss.

I, W. L. Cuddy, clerk of the District Court, in the Third Judicial District, State of Idaho, within and for the County of Ada, hereby certify that the within and foregoing transcript, composed of — pages, and containing the complaint and all exhibits thereto; the summons issued May

12, 1904, with return thereto, the summons issued February 4, 1905, with return thereto, and notice of petition for removal and bond for removal filed by the American Bonding Company of Baltimore under date of May 27, 1904, the demurrer to the complaint filed by the American Bonding Company of Baltimore on May 27th, 1904; order overruling demurrer of defendant, American Bonding Company; stipulation for answer as to American Bonding Company; answer of American Bonding Company, motion to quash service of summons, filed by the Flato Commission Company, filed January 31, 1905, with affidavits and exhibits thereto, attached; minutes of the Court, under date of February 4, 1905, and February 16, 1905, relating to the foregoing case, petition and bond for removal filed by the American Bonding Company on February 4, 1905, together with the endorsements of filing of the said several papers in this office, and that the within and foregoing are all of the files in the case of J. C. Mills, Jr., late Sheriff of Boise County, Idaho, vs. the American Bonding Company of Baltimore, et al., except, the petition for removal, by the American Bonding Company, filed under date of May 27, 1904, the plea of jurisdiction, to the Court, filed by the Flato Commission Company, defendant herein, in the Circuit Court of the United States, District of Idaho, and by that Court transmitted to the clerk of this Court and filed on September 22, 1904, together with the affidavits and other papers attached thereto.

And except the petition for removal filed February 16, 1905, for the American Bonding Company of Baltimore, also the Flato Commission Company on the same date,

and the joint bond for removal filed by both of said defendants, on said date, which last three, mentioned original papers are herewith transmitted and except all subpoenas issued in this action, and also all motions, affidavits and other papers, relating solely to the question of costs.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, the 13th day of March, A. D. 1905.

[Seal]

W. L. CUDDY,
Clerk of the District Court.
By Otto F. Peterson,
Deputy.

[Endorsed]: No. 249. U. S. District Court, Central Division, District of Idaho, J. C. Mills, Jr., vs. American Bonding Co. of Baltimore et al., Transcript. Filed March 13th, 1905. A. L. Richardson, Clerk.

In the District Court of the Third Judicial District of the State of Idaho, in and for Ada County.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organized
and Existing Under and by Virtue of
the Laws of the State of Maryland, and
THE FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

**Petition for Removal of the American Bonding Company of
Baltimore.**

To the Honorable GEORGE H. STEWART, Judge of the
District Court of the Third Judicial District of the
State of Idaho, Within and for the County of Ada:

Your petitioner, The American Bonding Company, appearing specially herein for the sole purpose of this application only, respectfully shows unto the Court:

1st. That this defendant, the American Bonding Company of Baltimore, is a nonresident of the State in which said suit was brought, to wit, the said state of Idaho, and is a corporation organized under the laws of the State of Maryland.

2d. That the defendant, the Flato Commission Company, is a nonresident of the State in which said suit was brought, to wit, the said State of Idaho, and is a corporation organized under the laws of the State of Nebraska.

That service of summons has not been made upon said defendant, as will more fully appear by the affidavit of Charles F. Neal, hereto attached and made a part hereof.

3d. That palintiff was, at the time of bringing said suit, and still is, as these petitioners aver, a resident and citizen of the State of Idaho.

4th. That the matter and amount in dispute in said suit, exceeds exclusive of interest and costs, the sum of two thousand (\$2,000.00) dollars.

5th. That said suit is of a civil nature, and that plaintiff prays in his complaint in said suit, for judgment in the sum of \$19,341.02 against the American Bonding Company of Baltimore as surety, upon an alleged bond in the

sum of twenty thousand (\$20,000.00) dollars, given to the plaintiff herein, as sheriff of Boise County, Idaho, under and by virtue of an affidavit on the foreclosure of a chattel mortgage given by one R. L. Shaw to the Flato Commission Company, defendant herein, and this defendant, the American Bonding Company of Baltimore, is the real party in interest, herein and the Flato Commission Company is, a this defendant believes and therefore alleges, wholly insolvent and therefore not a real party in interest herein.

6th. That the controversy in suit is wholly between citizens of different states, as aforesaid, and your petitioner offers herewith a good and sufficient surety for their entering in the Circuit Court of the United States for the District of Idaho, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court if said Court shall hold that this suit was wrongfully or improperly removed there-to.

And your petitioner prays this honorable court to proceed no further herein, except to make an order of removal of this suit to said Circuit Court of the United States, and to accept the said surety and bond and to cause the record herein to be removed into said Circuit Court of the United States for the District of Idaho, and your petitioner will ever pray.

THE AMERICAN BONDING COMPANY OF
BALTIMORE,

By NEAL & KINYON,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn, deposes and says: That he is an attorney and counselor of the Supreme Court of Idaho, and a member of the firm of Neal & Kinyon, who are the attorneys for the defendant in the above-entitled action, and has full authority to act for defendant in said matter; and that he has read the above and foregoing petition, and that the same is true and correct; that his knowledge of the matters set forth in said petition is based in part upon his personal knowledge, and upon letters and data furnished him by the defendant herein.

That none of the defendants herein are now in Ada County, Idaho, the place of residence of affiant.

CHARLES F. NEAL.

Subscribed and sworn to before me this 26th day of May, 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

[Title and Caption Omitted.]

Affidavit of Charles F. Neal.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn, deposes and says that he is the Charles F. Neal upon whom service was made as the designated, authorized agent of the Flato Commission Company, defendant herein, in and for the State of Idaho.

He further states that he has never been appointed such agent, to the best of his knowledge and belief. Further, that he has made an examination of the records in the office of the Secretary of State in and for the State of Idaho; also in the office of the clerk of the District Court in and for the County of Ada, State of Idaho, and there is no designation of himself as the authorized agent of the Flato Commission Company at either of the above offices.

Further, that there is no designation of any authorized agent of the Flato Commission Company at either of the above offices.

He further states that he is not in any way authorized to accept or receive service, or do any act of thing for, or on behalf of defendant, the Flato Commission Company.

CHARLES F. NEAL.

Subscribed and sworn to before me this 26th day of May, A. D. 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

[Title and Caption Omitted.]

Plea of Jurisdiction.

The defendant, the Flato Commission Company above named, specially appearing under protest for the purpose of this plea and for no other, says that it is not a corporation organized under the laws of the State of Idaho, nor citizen nor inhabitant of the said State of Idaho, nor does it reside therein, but that it is a corporation organized under the laws of the State of Nebraska and an inhabitant of the State of Nebraska and residing at South Omaha in the

District of Nebraska where its corporate meetings are held and its corporate business transacted, which said facts appear upon the face of the petition herein.

That it has not and never has had a resident agent in the State of Idaho as provided by page 2653 of the Revised Statutes of Idaho 1887 (page 2162, Second Code of 1901) as will more fully appear by the affidavit of Charles F. Neal of Boise, Idaho, which is hereto attached and made a part hereof, marked Exhibit "A" and by affidavit of James C. Dahlman Secretary and Manager of this defendant corporation, residence South Omaha, Nebraska, which said affidavit is hereto attached and made a part hereof and marked Exhibit "B."

Further, that Charles F. Neal upon whom the pretended service of summons was made in this cause is not and never has been the agent or representative of this defendant in any matter whatever, and that this defendant has never at any time in the past appointed, and has now no agent upon whom service of summons can be had within the State of Idaho, as will more fully appear by the affidavit of the said Charles F. Neal which is hereto attached and marked Exhibit "A" and made a part hereof, and by the affidavit of James C. Dahlman, secretary and general manager of defendant, Flato Commission Company, which affidavit is hereto attached marked Exhibit "B" and made a part hereof, and to which affidavit reference is made.

Wherefore, insisting upon its exemption from suit in this court it shows that not in this court, but in the District

Court of the United States for the District of Nebraska has jurisdiction in the premises.

FLATO COMMISSION COMPANY,
By HAWLEY, PUCKETT & HAWLEY,
Its Attorney Specially Appearing for the Purpose of this
Plea Only.

State of Idaho,
County of Ada,—ss.

James H. Hawley, being first duly sworn, deposes and says that he in an attorney and counsel of the Supreme Court of Idaho and of this Court, and a member of the firm of Hawley, Puckett & Hawley who are the attorneys for the defendant in the above-entitled action and has full power to act for defendant in said matter; that he has read the above and foregoing plea to jurisdiction and that the same is true and correct; that his knowledge of the matters set forth in said petition is based in part on his own personal knowledge and upon letters and data furnished him by the defendant herein; that none of the defendants herein are now in Ada County, Idaho, the place of residence of affiant.

JAMES H. HAWLEY

Subscribed and sworn to before me this 10th day of September, 1904.

ADAMS,
Notary Public.

I hereby certify that in my opinion the foregoing plea

to the jurisdiction of the court is well founded in point of law.

HAWLEY, PUCKETT & HAWLEY,
Counsel for Defendant, Flato Commission Company.

[Title and Caption Omitted.]

**Affidavit of Charles F. Neal and James C. Dahlman Attached
to Plea of Jurisdiction of Flato Commission Company.**

Filed in Case No. ——. U. S. Circuit Court, District of
Idaho, Sept. 12, 1904.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn, deposes and says that he is the Charles F. Neal, upon whom service was made as the designated, authorized agent of the Flato Commission Company defendant herein, in and for the State of Idaho,

He further states that he has never been appointed such agent, to the best of his knowledge and belief. Further, that he has made an examination of the records in the office of the Secretary of State in and for the State of Idaho; also in the office of the Clerk of the District Court in and for the County of Ada, State of Idaho, and there is no designation of himself as the authorized agent of the Flato Commission Company at either of the above offices.

Further, that there is no designation of any authorized agent of the Flato Commission Company at either of the above offices.

He further states that he is not in any way authorized

to accept or receive service, or do any act of thing for, or on behalf of, defendant, the Flato Commission Company.

[Seal]

CHARLES F. NEAL.

Subscribed in my presence and sworn to before me this 5th day of Sept., 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

State of Nebraska,
County of Douglas,—ss.

James C. Dahlman, being first duly sworn, deposes and says that he is and has been for five years last past the duly authorized and acting Secretary and for two years and five months the Manager of the Flato Commission Company, a Nebraska corporation with its principal office at South Omaha, Nebraska.

He further states that he is the officer who has charge of the books and papers, and cares for the correspondence of the said Flato Commission Co., defendant herein, that he knows of his own knowledge that Charles F. Neal of Boise, Idaho, upon whom the purported service of summons was made in the above-entitled action as the duly authorized agent of defendant, the Flato Commission Company, is not and never has been the authorized agent of defendant, the Flato Commission Company, and never has been authorized to do any business whatever for the said company as its agent.

Further that the Flato Commission Company, defendants herein, has not and never has had an authorized stat-

utory agent in the State of Idaho as provided for in page 2653 Revised Statutes of 1887 of Idaho.

JAMES C. DAHLMAN

Subscribed in my presence and sworn to before me this 18th day of August, 1904.

J. F. POWERS,
Notary Public.

Service of copy of above and foregoing admitted this 12th day of September, 1904

W. E. BORAH.

Endorsement on plea to jurisdiction, and foregoing affidavits which were filed as one paper as follows: (Omitting title and caption.) No. ——. U. S. Circuit Court, Central Division, District of Idaho, Plea to Jurisdiction of Flato Commission Company. Filed Sept. 12, 1904. A. L. Richardson, Clerk. Filed Sep. 22d, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says: That the foregoing, comprising 9 pages, contain true and correct copies of the petition for removal, filed by the American Bonding Company of Baltimore filed May 27, 1904, in this action, that the foregoing copy of plea of jurisdiction to the Court, filed by the Flato Commission Company, the defendant herein, on Spe. 12, 1904, in the Circuit Court of the United States, District of Idaho, and by that Court transmitted to and filed in the District Court of the Third Judicial District in and for Ada County, on

Sep. 12, 1904, as also the foregoing copies of affidavits by Charles F. Neal and James C. Dahlman which were attached to the aforesaid plea to jurisdiction are each, true and correct and complete copies of the original files in said cause as shown by the office files in my office, made at and prior to the filing of the before mentioned papers and by me compared therewith.

Affiant further states that he has made diligent search and inquiry in his own office and in the office of the clerk of the District Court, in the office of W. E. Borah and elsewhere and that he is unable to find the original papers above mentioned, or any part thereof.

B. F. NEAL.

Subscribed and sworn to before me this 13th day of March, A. D. 1905.

[Seal]

W. L. CUDDY,
Clerk.

By Otto F. Peterson,
Deputy.

[Endorsed]: No. 249. U. S. Circuit Court, Central Division, District of Idaho. J. C. Mills, vs. American Bonding Company of Baltimore, et al. Showing on Transcript. Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Petition for Removal of the American Bonding Company of Baltimore.

Your petitioner, the American Bonding Company of Baltimore, respectfully shows to this Honorable Court that

it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees and (2) that the controversy herein is between citizens of different states; that the plaintiff was at the time of the beginning of this action, and still is, a citizen of the State of Idaho, residing in Boise County in said State; that your petitioner, the American Bonding Company of Baltimore, was, at the commencement of this action, and still is, a citizen of the State of Maryland, and of no other state, residing at Baltimore City in said State; (3) that the Flato Commission Company, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of the State of Nebraska and of no other State, residing at South Omaha in said State; and that your petitioner, the American Bonding Company of Baltimore, desires to remove this suit before the trial thereof, into the next Circuit Court of the United States to be held in the District of Idaho, Central Division.

II.

Your petitioner, the American Bonding Company of Baltimore, heretofore on the 27th day of May, 1904, and within the time to plead, filed its petition for removal of this cause into the Circuit Court of the United States for the District of Idaho, which petition was denied by the Circuit Court of the United States for the District of Idaho on or about the 13th day of September, 1904, that being a day of the next succeeding term of the Circuit Court, and said cause was by said Circuit Court remanded

to the District Court in and for Ada County, Idaho, for the reason that the Flato Commission Company, codefendant herein, was a party in said cause and had not joined in asking for the removal of the same and had been regularly served with summons as shown by the records of said court; that thereafter on the 1st day of February, 1905, the Flato Commission Company appeared specially in this court; that thereafter on the 1st day of February, 1905, of this court over it and filed its motion to quash the service of summons which had been theretofore returned as made upon Charles F. Neal statutory agent of defendant Flato Commission Company, and which return of service appeared of record at the time of remanding of said cause from the Circuit Court of the United States as aforesaid, which said motion to quash was on the 4th day of February, 1904, argued to this Court and sustained.

That immediately after the quashing of summons as against defendant, the Flato Commission Company, plaintiff herein in open Court directed that alias summons issue for service upon said defendant the Flato Commission Company, and immediately thereafter and prior to the issuance of such alias summons, this defendant, the American Bonding Company of Baltimore, filed its petition for removal of this cause in the Circuit Court of the United States for the district of Idaho, which petition was as aforesaid filed on the 4th day of February 1905, and was argued before the Hon. James H. Beatty, Judge of the Circuit Court of the United States, District of Idaho, on the 7th day of February, 1905, and said cause was recourt show that there was process outstanding at the time

manded for the reason that the proceedings before that of hearing as against the defendant, the Flato Commission Company.

III.

Further that on the said 7th day of February, 1905, the alias summons as aforesaid issued out of this court on the 4th day of February, 1905, for service upon defendant the Flato Commission Company, was served upon said defendant under and by virtue of the provisions of section 4144 of the Revised Statutes of Idaho and acts amendatory thereof by delivering a true copy of alias summons and copy of complaint herein to William Cuddy, Auditor of Ada County, Idaho.

That this defendant, the American Bonding Company of Baltimore, has taken no other or further steps herein of any kind whatever except only the removal proceedings herein referred to, since the quashing of summons aforesaid on the 4th day of February, 1905, as to defendant the Flato Commission Company, and no action whatever in said cause since it came to the knowledge of said American Bonding Company of Baltimore that service of summons as aforesaid had been had upon the Flato Commission Company, except only as to object to the jurisdiction of this court to try this cause prior to the expiration of the time in which defendant the Flato Commission Company was by law required to plead herein.

Your petitioner offers herewith a bond with good and sufficient surety conditioned according to law, for its entering in the Circuit Court of the United States for the District of Idaho, a copy of the records in this suit, and

for paying all costs that may be awarded by said Court if said Court shall hold that this suit is wrongfully and improperly removed thereto; and your petitioner prays this Honorable Court to proceed no further herein, except to make an order of removal required by law, and to accept such surety bond and to cause the records herein to be removed to said Circuit Court of the United States for the District of Idaho, and he will ever pray.

AMERICAN BONDING COMPANY OF BALTIMORE,

By NEAL & KINYON,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being duly sworn, deposes and says: That he is one of the attorneys for petitioner in above-entitled action; that he has read the above and foregoing petition for removal, knows the contents thereof, and that the facts stated therein are true of his own knowledge except as to matters therein states to be on information and belief and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the petitioner herein is absent from the county where the attorney resides and where the suit was filed.

B. F. NEAL.

Subscribed and sworn to before me this 13th day of February, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: Petition for Removal, Filed Feb. 16, 1905.
W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.
Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Petition for Removal of the Flato Commission Company.

Your petitioner, the Flato Commission Company, respectfully shows to this Honorable Court that it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees; and (2) that the controversy herein is between citizens of different states; that the plaintiff was at the time of the beginning of this action and still is a citizen of the State of Idaho, residing in Boise County, in said State. That your petitioner, the Flato Commission Company is a corporation and was at the commencement of this action and still is, a citizen of the State of Nebraska and of no other State, residing at South Omaha, in said State. That the American Bonding Company of Baltimore, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of the State of Maryland, residing at Baltimore in said State, and that your petitioner, the Flato Commission Company, desires to remove this suit before the trial thereof into the next Circuit Court of the United States to be held in the District of Idaho.

II.

And your petitioner offers herewith good and sufficient surety for his entering in the Circuit Court of the United

States for the District of Idaho on the first day of its next session, a copy of the records in this suit and for paying all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that this suit was wrongfully and improperly removed thereto.

In support of this its application for removal petitioner attaches hereto and makes a part hereof a copy of summons served upon William Cuddy, Auditor of Ada County, Idaho, with affidavit of said Cuddy as to service made.

And your petitioner therefore prays that said surety and bond may be accepted; that this suit may be removed in the next Circuit Court of the United States to be held in the District of Idaho pursuant to the statutes of the United States in such cases made and provided, and that no further proceedings may be had herein in this court, and it will ever pray.

FLATO COMMISSION COMPANY,
By HAWLEY, PUCKETT & HAWLEY,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

Jesse Hawley, being first duly sworn, deposes and says that he is one of the attorneys for petitioner in above-entitled action, that he has read the above and foregoing petition for removal, knows the contents thereof and that the facts therein stated are true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that peti-

tioner herein is absent from the county where the attorney resides and where the suit was filed.

JESS HAWLEY

Subscribed and sworn to before me this 13th day of February, 1905.

W. L. CUDDY,

Clerk District Court.

By Otto F. Peterson,

Deputy.

[Endorsed]: Petition for Removal. Filed Feb. 16, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Removal Bond.

Know all men by these presents: That we, the American Bonding Company of Baltimore, Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and the Flato Commission Company, a corporation organized under and by virtue of the laws of the State of Nebraska, as principal, and the United States Fidelity and Guaranty Company, of Baltimore, Maryland, as surety, are holden and firmly bound unto J. C. Mills, Jr., in the penal sums of five hundred (\$500.00) dollars, for the payment of which well and truly to be made unto the said J. C. Mills, Jr., his heirs, representatives and assigns, we bind ourselves and each of our representatives and assigns, jointly and severally by these presents.

Upon the condition nevertheless, that whereas, the said American Bonding Company of Baltimore, and the said Flato Commission Company, have filed their respective petitions, in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, for the removal of a certain action therein, pending, wherein the said J. C. Mills, Jr., is plaintiff and the said American Bonding Company of Baltimore and the said Flato Commission Company are defendants, to the Circuit Court of the United States for the District of Idaho.

Now, therefore, if the said American Bonding Company of Baltimore, and the said Flato Commission Company, shall enter in the said Circuit Court of the United States, on the first day of the next succeeding term a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we the said American Bonding Company of Baltimore, the said Flato Commission Company and the United States Fidelity and Guaranty Company have hereunto set their hands and seals this 16th day of February, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By NEAL & KINYON,
Its Attorneys.

FLATO COMMISSION COMPANY,
By HAWLEY, PUCKETT & HAWLEY,
Its Attorneys.

[Seal]

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By CLAUDE H. ROBERTS,
Its Attorney in Fact.

[Endorsed]: Removal Bond. Filed Feb. 16th, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Affidavit of W. E. Borah.

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That he is one of the attorneys for the above-named plaintiff. That the time for the defendant, the American Bonding Company of Baltimore, to appear and answer under the summons in the above cause was May 27, 1904, and at said time the said American Bonding Company appeared and filed its general demurrer in said Court. That thereafter the American Bonding Company through its attorneys and on or about November 26, 1904, appeared in said court and argued the demurrer to the complaint, and that thereafter the Court rendered a written opinion upon said demurrer and overruled the same on or about November 26, 1904. That at the time of said appearance and argument

of said demurrer no objection was raised to the jurisdiction of said State Court. That after overruling said demurrer and without any objection upon the part of the American Bonding Company, said company through its attorneys entered into a written stipulation for time in which to answer and thereafter having taken the time covered by said stipulation filed their answer upon December 12, 1904, in said Court and did not object at said time to the jurisdiction of the court or file said answer under protest. That thereafter and on or about the 25th day of January, 1905, counsel for both plaintiff and defendant being present in said court, the cause was by consent of both parties through their counsel set for trial for Feb. 4, 1905, and the said case was set without any protest upon the part of the American Bonding Company or objection to the jurisdiction of said court. That thereafter and on or about Feb. 71, 1905, the cause proceeded to trial before the court and a jury and verdict in favor of the plaintiff resulted and judgment was duly entered. That notice of motion for new trial has been served and a bond for stay of execution has been duly filed by the American Bonding Company.

Affiant further states with reference to the Flato Commission Company that said Flato Commission Company was first served by serving Charles E. Neal as statutory agent of the Flato Commission Company, such service being made on the 17th day of May, 1904. That thereafter and on the 31st day of January, 1905, the Flato Commission Company appeared by its counsel and moved to quash the summons on the ground that said Neal was not the statutory agent of the Flato Commission Company. That

immediately upon said summons being quashed an alias summons was issued and the same was served upon the Flato Commission Company upon the 7th day of February, 1905, by serving the auditor of Ada County, Idaho, as provided by the statutes of Idaho. That the said Flato Commission Company has never made any appearance by demurrer or answer but has defaulted and that default was duly taken against said Flato Commission Company in the State Court upon the 6th day of March, 1905, and judgment duly entered upon said default upon the 7th day of March, 1905. And further affiant saith not.

W. E. BORAH.

Subscribed and sworn to before me this 13th day of March, 1905.

[Seal]

JOHN J. BLAKE,
Notary Public.

[Endorsed]: Affidavit of W. E. Borah. Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Motion to Remand.

Comes now the plaintiff above named and moves that the above cause be remanded to the District Court of the Third Judicial District of the State of Idaho in and for Ada County, and for grounds of motion says:

1. That it appears from the files and records in this case and from the alleged petition for removal that no ground exists for the removal of said cause from the District Court of the Third Judicial District of the State of Idaho in and for Ada County to the above court.

2. It appears from the alleged petition for removal and the petition and files and affidavit in this case that this court has no jurisdiction of the above cause and that said suit was improperly removed to this court.

3. That it appears that all the defendants did not join in the petition for removal as required by the statutes and laws relative to the removal of causes from the State Court to the Federal Court.

4. That this court has no jurisdiction of this cause.

W. E. BORAH,

Attorney for Plaintiff.

[Endorsed]: Motion to Remand. Filed March 13, 1905.

A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Certificate of District Judge.

State of Idaho,

County of Ada,—ss.

I, George H. Stewart, Judge of the District Court of the Third Judicial District of the State of Idaho in and for Ada county, do hereby certify that the answer in the above-entitled cause was filed by the defendant, the American Bonding Company on December 12, 1904, prior to which time said company had appeared by its attorney and argued a demurrer which was overruled. That upon the 25th day of January, 1905, in open court plaintiff and defendant, the American Bonding Company, being present by their attorneys said cause was called for setting and was set for trial by consent of both parties for February 4, 1905, and that no objection or protest was made at said

time as to the jurisdiction of the Court or against proceeding to trial in the State Court. That prior to the time the present petition for removal was filed, the defendant, the American Bonding Company, had appeared by counsel and had consented that the cause be set for trial and had itself called for a jury in said case.

GEO. H. STEWART,
District Judge.

[Endorsed]: No. 249. Certificate of District Judge.
Filed March 13, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Affidavit of B. F. Neal.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of counsel for the American Bonding Company, one of the defendants in the above-entitled action. That he is the counsel who prepared and filed the various papers for removal heretofore filed in this case, and is the B. F. Neal who argued the demurrer filed by said defendant to the complaint herein on Sep. 22, 1904, before the Hon. Geo. H. Stewart, Judge of the District Court in and for Ada County, Idaho.

Affiant further says that on the date of the argument of said demurrer this affiant orally objected to the jurisdiction of said court to hear said demurrer for the reason that there was in the files pleas to jurisdiction of the Court over the Flato Commission Company and unacted upon,

which said pleas were founded upon the alleged ground that no service of summons as required by law had been had upon said defendant, and that the purported service was void and wholly unauthorized. That this defendant at such time and place and prior to the beginning of the argument on said demurrer objected to being required to argue said demurrer for the reason that if the Flato Commission Company was not a party to the suit brought in by due and proper service of summons that it was an election to proceed against the American Bonding Company only to require at that time arguments and rulings upon said demurrer, and that said cause was lawfully removed to the Circuit Court of the United States, District of Idaho, as to American Bonding Company. That notwithstanding affiant's said objection on behalf of American Bonding Company the Court required that the arguments on said demurrer proceed and thereafter did rule upon said demurrer, overruling the same.

Affiant further says that thereafter in due and proper time the American Bonding Company filed its answer in said cause and that on the first day of January, A. D. 1905, term of District Court in and for the Third Judicial District, State of Idaho for Ada County, upon the calling of the docket this cause was set for hearing being No. — in regular order of the jury cases for trial.

Affiant further says that at said time nor any other time, did the affiant demand a jury. He further states that he did decline to waive a jury on behalf of the American Bonding Company.

Affiant further says that said causes were not at the

opening of said Court set for any date certain but were set for trial in their order as the civil jury cases appeared upon the civil trial docket and that they were on said docket cases Nos. 25 and 26 and were civil jury civil cases Nos. ——— and ———.

Affiant further says that on February 1st, thereafter and before the trial of any of the civil jury cases the case of William Finney vs. American Bonding Company was set for trial to follow the Fred Bond and Jennie Daly murder cases, which date was supposed to be about Feb. 4, 1905. That said date was set without the consent of affiant or his co-counsel who represented the defendant, American Bonding Company. That on said February 4th an application to quash service of summons which had been theretofore filed by the Flato Commission Company was sustained and then and thereby defendant the American Bonding Company, became and was the only party defendant to said action. That affiant acting for said American Bonding Company then and there in open court immediately after the discharge of the said Flato Commission Company as a party defendant renewed its former application to have said case removed to the United States Circuit Court for the District of Idaho, as will more fully appear by the transcript filed herewith.

Affiant further says that the Hon. George H. Stewart declined to permit the papers to be removed to the Federal Court but stated that defendant, the American Bonding Company might take a transcript of the papers and have the matter heard before Beatty. That thereafter by agreement between counsel for plaintiff and affiant said cause

was heard on the original papers in the Federal Court before the Hon. James H. Beatty, and that said cause was remanded by said court for the reason that the record then before the said Court showed that there was a summons outstanding against the defendant, the Flato Commission Company, and that it had been duly served by serving upon W. L. Cuddy, Auditor of Ada County, Idaho as by statute provided, and said Flato Commission Company was not a party to said removal petition, and for these reasons said Beatty caused said action to be remanded to the state court as not removable.

Affiant further states that on the morning of February 9th at the hour of opening court affiant was present in court when the court announced that he would set the Finney and Mills cases against the American Bonding Company, said cases being the actions at bar, to follow the Jennie Daly case, and such entry was duly made of record in the journals of said Court. That at said time in open court this affiant orally objects to the jurisdiction of said court to try this cause as to defendant, the American Bonding Company, at a date prior to the time when the defendant, the Flato Commission Company, would be compelled to answer or plead to the petitioner herein, and for the further reason that as to defendant, the American Bonding Company, said cause had been lawfully removed to the Federal Court.

Affiant further states that he relied upon the statement of the said Court then and there made that if tried this case would not be tried until after the trial of the case of the State of Idaho vs. Jennie Daly.

Affiant further says that he was notified by telephone on the night of February 15th at about eight o'clock P. M. that the case of Mills against the American Bonding Company, et al would be set for 10 o'clock February 16th, and the case of Finney vs. American Bonding Company, et al., would immediately follow that. Affiant further says that immediately upon the opening of court on the morning of February 16, 1905, he made his objections, which he then and there asked the reporter to take down in writing and which are filed herewith, objecting to the jurisdiction of said court to try either the Mills or Finney case at said time or at all, for the reason that said cause was not at issue as to the Flato Commission Company; for the reason that said cause had been lawfully removed as to the American Bonding Company, and for other reasons set out in said objections as shown by the reporter's transcript herewith.

Affiant further says that at every stage of the trial of each of the above cases in the said Court this affiant and his co-counsel objected to the jurisdiction of the said Court to try these cases for the reason that they had been removed; for the reason that cause was not at issue as to the defendant Flato Commission Company; for the reason that cause was taken up out of its order for trial and without proper notice to counsel for defendant, and for other reasons which are set out more specifically in the reporter's transcript of said evidence.

Further affiant saith not.

B. F. NEAL.

Subscribed and sworn to before me this 18th day of March, 1905.

[Seal]

L. V. HOUSEL.
Notary Public.

[Endorsed]: No. 249. Affidavit of B. F. Neal. Filed March 22d, 1905. A. L. Richardson, Clerk.

Service of within affidavit with copy admitted without waiver of any rights, March 22, 1905.

W. E. BORAH,
Attorney for Plaintiff.

[Title and Caption Omitted.]

Proceedings Before District Court.

Be it remembered that on the 16th day of February, 1905, on the trial of the above-entitled cause before the Hon. Geo. H. Stewart, Judge of the Third Judicial District of the State of Idaho, with a jury, the following proceedings were had and entered of record, to wit:

Before the impaneling of the jury the defendant made the following motion:

Mr. NEAL.—The defendant, the American Bonding Co., objects to going to trial at this time, or at all, in this Court, for the reason that the cause has been legally removed to the Circuit Court of the United States for the District of Idaho. This defendant objects to going to trial for the further reason that the time in which the defendant, The Flato Commission Co., is by law required to answer, has not expired. And for the further reason that this cause was set for trial to follow the case of the State of Idaho against Jennie Daly, and is being taken up out of

its turn without notice prior to last night about the hour of 8 o'clock that it would be taken up at this time. That at this time the defendant, the American Bonding Co., is unable to get witnesses here who are necessary for the defense, and cannot do so within less than three days' time.

That ———— ————, of Grand Island, Nebraska, who was a witness at the trial of the cases of Ralph Cowden against this plaintiff, in the District Court of the Third Judicial District in and for Canyon County, Idaho, would, if present, swear that Ralph Cowden, not long prior to the time of the purchase of the sheep in controversy by said Cowden, that they had been mortgaged by one R. L. Shaw to the Flato Commission Co., of South Omaha, Nebraska, and that said mortgage was then and there wholly unpaid. That the defendant, the American Bonding Company, is unable to get such witness here at this time, and cannot do so short of three days' time from this date, as he is now at Grand Island, Nebraska, but could get him here inside of three days from this date. That said witness is a necessary witness and is the only witness except ———— ————, of Wood River, Nebraska, by whom defendant, the American Bonding Co, can prove the facts above set forth. That the defendant, the American Bonding Co. had arranged for said ———— ———— of Grand Island, Nebraska, to be present at the trial of this case. That his testimony is material, and as this affiant believes, the defendant, the American Bonding Co. cannot safely go to trial in this case without the evidence of said witness. That ———— ———— of Wood River, Nebraska, would testify to the same facts mentioned hereinabove as would

witness -----, of Grand Island, Nebraska. That if this cause be continued to a date at least three days later than this date, affiant will be able to procure the presence of the two witnesses mentioned on behalf of the defendant, the American Bonding Co. That affiant heretofore notified witnesses in question that this case would follow the two criminal cases known as the Daly cases, and that he would notify them in time to be here for such trial. That affiant sent notice as quick as he knew this case was likely to be advanced but there is not time and cannot be time for them to be present at this trial prior to three days from this time. That affiant knows of no other witnesses by whom the facts which can be proven by these witnesses, can be shown in favor of the defendant, the American Bonding Co.

Write that as sworn to by B. F. Neal.

The American Bonding Co., also objects to going to trial at this time for the reason that the time in which the Flato Commission Co., is required to answer in this case, has not expired and will not expire until the 17th day of February, 1905. That the petition of the American Bonding Co., in this case is that but of mere surety, its codefendant, the Flato Commission Co., being the principal in this suit. That in justice and in right, this defendant should be permitted leave for stay of this suit until such time as the Flato Commission Company is required to answer herein. This defendant objects to any proceedings whatever in this case.

The COURT.—I would like to ask you a question, Mr. Neal, in this connection; on the 25th day of January this

case was set for trial on February 4th, at which time you filed a petition to remove the case to the Federal Court, as you have this morning?

Mr. NEAL.—Yes, sir.

The COURT.—Were those witnesses present upon that day?

Mr. NEAL.—They were not present, but arrangements had been made to have them here any time by wire.

The COURT.—Also, the cause was postponed at that time, not because of the absence of these witnesses, but because of the petition for removal; that was the reason it was not tried on that day?

Mr. NEAL.—Well, as I recollect the matter there was other cases on that particular date.

The COURT.—When I called your case you filed your petition to remove it to the Federal Court?

Mr. NEAL.—That is true. I made no other showing.

The COURT.—The motions are overruled.

To which ruling and action of the Court, defendant, by counsel then and there duly excepted.

State of Idaho,
County of Ada,—ss.

W. L. Phelps, being first duly sworn, deposes and says: That he is the official stenographer of the Third Judicial District of the State of Idaho. That he took an accurate report of the proceedings in the above-entitled cause in shorthand, and that the above is a true and correct copy of the same as to matters and things therein contained.

W. L. PHELPS

Subscribed and sworn to before me this 22d day of March, 1905.

[Seal]

W. L. CUDDY,
Clerk.

By Otto F. Peterson,
Deputy.

March 22d, 1905.

Service of within affidavit by copy admitted without waiver of any rights.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Proceedings Before District Court. Filed March 22d, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Supplemental Petition.

Comes the American Bonding Company, petitioner herein, and for its additional and supplemental petition for removal herein, adopts, reaffirms and reiterates, each and every statement of its petition for removal filed in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, on the 16th day of February, 1905, and in this Court on the 13th day of March, 1905, as well as also all proceedings therein referred to and made a part thereof, and for its supplemental petition herein further says:

I.

That after the due filing of its petition and bond for removal on said 16th day of February, 1905, and after the

due filing of the petition and bond for removal filed herein by the Flato Commission Company, the codefendant herein with this petitioner, and the due calling of the attention of the said Court, which was then and there in session, to said petitions and bonds, and the request on the part of each of said defendants that said District Court, in and for said Ada County, enter its order, that it proceed no further and that it enter its order that this petitioner and its codefendant, the said Flato Commission Company, had lawfully removed said cause to the Circuit Court of the United States for the District of Idaho, the said Court did then and there refuse to enter said order or any part thereof, and did notwithstanding said proceedings so as aforesaid taken by petitioner and its codefendant, the Flato Commission Company, order that said cause proceed to immediate trial as to this petitioner only, whereupon this petitioner filed its objections thereto, on the ground that said cause had been on that date lawfully removed to this court, and further objected and protested against said court taking any proceeding whatever therein, and demanded that said cause be continued until such time as its codefendant, the Flato Commission Company, was by law required to plead and answer. That notwithstanding said objections and protests of this petitioner, said court at the request of plaintiff in this cause did proceed to empanel a jury and try this cause, notwithstanding the same was not at issue as to its codefendant, the Flato Commission Company, and notwithstanding the said Flato Commission Company had not answered or plead to said complaint, and notwithstanding the time in which said Flato

Commission Company was required by law to answer or plead had not so expired, and did so try the same on the 17th day of February, 1905, over the said protests and objections of your petitioner as aforesaid, made and caused to be duly entered of record, and did not submit said cause to said jury as aforesaid against the said protests and objections of this petitioner so as aforesaid made and caused to be entered of record and caused said action to be tried and verdict found as to this defendant only; that then and thereby, by the acts of the said plaintiff, done as aforesaid over the protests and objections of this petitioner so as aforesaid made and entered, and with full knowledge of the fact that as to the Flato Commission Company, defendant herein as aforesaid, the time to answer or plead had not expired, the said plaintiff elected to proceed against this defendant separately, and then and thereby there was by the act of said plaintiff a severance of said cause of action as to the said defendants, and each of them, and then and thereby for the first time, this petitioner had a separate right of removal from the right of its codefendant herein; and said cause was for the first time removable as to this petitioner, without the joint and concurrent action of its codefendant herein, which facts more fully appear by the records filed herein, as well as by the affidavits in support of petitioner filed by this petitioner herein.

Wherefore, petitioner prays that this Court take jurisdiction of this cause and issue its order to the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, that it proceed no further herein,

and that all proceedings in said court be stayed as of this date until further order of this court.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Petitioner.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys for petitioner in the above-entitled action; that he had read the above and foregoing supplemental petition for removal and knows the contents thereof; that the facts stated therein are true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that petitioner is a corporation and is absent from the county where the attorney resides and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 23d day of March, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: No. 249. Supplemental Petition. Filed March 23, 1905. A. L. Richardson, Clerk.

At a Stated Term of the Circuit Court of the United States,
for the District of Idaho, held at Boise, Idaho, on
Tuesday, the 4th day of April, 1905. Present: Hon.
JAS. H. BEATTY, Judge.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

vs.

No. 249.

AMERICAN BONDING COMPANY OF
BALTIMORE et al.,

Order Denying Motion to Remand.

On this day was announced the decision of the Court upon the motion to remand this cause heretofore argued and submitted to the effect that said motion be denied. To which ruling plaintiff by his counsel excepted.

[Title and Caption Omitted.]

Order Extending Time.

It is hereby ordered and adjudged that the plaintiff in the above-entitled cause have sixty days after the trial of the above cause in which to prepare and file his bill of exceptions in the above-entitled cause, and it is further ordered that an exception is hereby allowed to plaintiff in overruling the plaintiff's motion to remand the above cause to the State court.

JAS. H. BEATTY.

[Endorsed]: No. 249. Order Extending Time. Filed April 5, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Demurrer of Defendant American Bonding Company.

Comes now the defendant, the American Bonding Company, and demurrers to the complaint filed herein, and for cause of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for American Bonding Company.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Defendant.

Due service of the foregoing demurrer with copy admitted this 5th day of April, 1905, without any waiver of right to file demurrer.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Demurrer of Defendant American Bonding Co. Filed April 5th, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Demurrer of Defendant Flato Commission Company.

Comes now the defendant, the Flato Commission Company, and demurs to the complaint filed herein, and for cause of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

NEAL & KINYON,
MORRISON & PENCE,

Attorneys for Defendant, Flato Commission Company.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Defendant.

Due service of the foregoing demurrer with copy admitted this 5th day of April, 1905, without waiver of right to file demurrer.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Demurrer of Defendant Flato Commission Co. Filed Apr. 15, 1905. A. L. Richardson, Clerk.

At a Stated Term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Saturday the 8th day of April, 1905. Present: Hon.

JAS. H. BEATTY, Judge.

J. C. MILLS, JR., Sheriff, etc.,

vs.

No. 249.

AMERICAN BONDING COMPANY OF
BALTIMORE

Order Overruling Demurrers.

On this day was announced the decision of the Court, upon the separate demurrers of the defendants, the American Bonding Company of Baltimore and the Flato Commission Company. Ordered that said demurrers and each be and the same is hereby overruled, and ordered that the Flato Commission Company be given until the 15th inst to answer in said cause. An exception to the said ruling is allowed.

[Title and Caption Omitted.]

Answer of Flato Commission Company.

Comes defendant, the Flato Commission Company, and for its separate answer herein admits, alleges and denies as follows:

I.

Admits the allegations of paragraphs one and two of said complaint.

II.

Answering paragraph three this defendant admits that it did file with plaintiff as sheriff of Boise County, Idaho, an affidavit and notice in due form of law and as required by the statutes of the State of Idaho relative to the foreclosure of chattel mortgages, under the process of "notice and sale," admits the execution of a bond of which the copy annexed to said complaint is a substantial copy. Further answering said paragraph this defendant says that it has not information or belief sufficient to enable it to answer the other allegations of said paragraph three, to

wit, that under and by virtue of the aforesaid affidavit and notice delivered to said plaintiff as aforesaid by this defendant, plaintiff took possession of certain personal property, to wit, about 2,629 head of ewes, 1,645 lambs and 268 head of mixed yearlings, or any other number of ewes, lambs or mixed yearlings, branded as in said paragraph set out, or that all or any of said sheep were claimed by Ralph Cowden or by any other person as his separate and individual property, and therefore denies each and all of said allegations. And further alleges that if any sheep were taken by plaintiff by virtue of said writ, then they were the property of R. L. Shaw, and were the property described in the chattel mortgage referred to in said complaint as having been given by said R. L. Shaw to this answering defendant, which said mortgage was given for value, and without any design to hinder, delay or defraud creditor or creditors and was in good faith so executed by said Shaw.

III.

Answering paragraph four of said complaint this defendant admits the signing of the alleged bond herein mentioned, and further answering denies that said bond was made, executed and delivered for the purposes in said paragraph set out, to wit, in order that plaintiff might hold said sheep, retain possession of the same and make sale thereof to satisfy the mortgage of this defendant. Further answering said paragraph four this defendant alleges the facts as to the execution of said bond to be as follows: that when said affidavit and notice mentioned as aforesaid by plaintiff were delivered to plaintiff by this defendant

for service in the manner provided by law, to wit, by levy, advertisement and sale, the plaintiff declined to serve the same by levying and taking into his possession the personal property therein described, or do any other thing whatever by law of him required until he had first been indemnified by this defendant with an indemnity bond for the amount of and conditioned as in said paragraph four set out. That thereafter this defendant in order that it might have and receive at the hands of the said plaintiff, sheriff as aforesaid, the service and duty by him owing in the premises to this defendant, did on said sheriff's demand and refusal to act unless and until so indemnified procure to be executed and delivered to the plaintiff as sheriff aforesaid, a bond of indemnity conditioned in manner and form as aforesaid, required by said plaintiff, that is to say in said paragraph four set out. That said bond of indemnity was not voluntary but was coerced and extorted from said Flato Commission Company without authority of law and in violation of law and was so executed solely in order that said Flato Commission Company might require and have at the hands of plaintiff, as sheriff aforesaid, service and duty which he by law was required to render to this defendant upon the payment or tender of his lawful fees therefor, which fees were then and there tendered and paid, and said Flato Commission Company was entitled to said service without any other or further requirement or demand whatsoever on the part of said plaintiff, sheriff as aforesaid. That said bond was taken by said plaintiff as sheriff aforesaid under color of his office as sheriff as aforesaid, and is wholly unauthorized

by law and is wholly without consideration and is illegal and void, wherefore this defendant ought not to be charged and holden on the same.

IV.

Answering paragraph five this defendant denies that upon the execution and delivery of said bond of indemnity the plaintiff retained possession of any sheep, and denies that he had any sheep in his possession when said bond was executed and delivered, and denies that he sold any sheep other than the sheep mortgaged and which were described in the mortgage, and in the process, placed in his hands in said foreclosure proceedings at the request of this defendant, or at all, and denies that this defendant, or any other person in his behalf requested the sale of any sheep other than those mortgaged and described in said mortgage and process, or made any request or gave any notice other than that contained in said process, and further answering alleges the facts with reference to the surroundings and giving of said bond are as set forth in paragraph three of this answer.

V.

Answering paragraph six of said complaint, this defendant says that it has not sufficient information or belief to enable it to answer the allegations of said paragraph six, to wit, that one Ralph Cowden had commenced an action against plaintiff as sheriff of Boise County, Idaho, and had recovered judgment in the District Court of the Third Judicial District in and for Canyon County, State of Idaho, for the sum of \$19,195.87, and for costs amounting to \$145.15, and wherein it was ordered and adjudged that

said Cowden have return of the property described in said affidavit and notice and so as aforesaid alleged, claimed by said Cowden, or in lieu thereof his damages in the sum of \$19,195.87 and costs in the sum of \$145.15, nor of any other judgment for return of property or damages, or costs in said matters, nor of the affirmance of such judgment, or any judgment in the premises on appeal in the Supreme Court of Idaho. Nor of the fact of plaintiff herein being liable to Ralph Cowden in the sums as in said paragraph six alleged, or of any other sum or sums of money by reason of said alleged judgment, nor of there being any judgment as alleged by plaintiff growing out of the matters alleged in said complaint, and for this reason denies the same.

Further answering said paragraph six this defendant denies that plaintiff herein appeared in any such alleged suit and contested the same at the instance or at the request or with the full knowledge, or any knowledge, or with notice to, or with the consent of, or by the advice of this answering defendant.

VI.

Answering paragraph seven of the complaint herein, this defendant denies that the conditions of said alleged indemnity bond have been broken, denies that this defendant is liable to the plaintiff because of the execution of said alleged bond and by virtue of the terms and conditions of the same in the sum of \$19,195.87, principal and interest and the further sum of \$145.15 costs, with interest on said amounts as on said paragraph seven alleged, or in any other sum or sums.

Second Defense.

For a further and second defense this defendant says that it adopts the allegations of paragraphs one, two, three, four, five and six, of its answer herein as fully as though herein fully set out and says that under said facts the bonds sued on in this action is without valid consideration, and was coerced and extorted from this defendant, was so taken and required without authority of law and contrary to both the statute and policy of law, and plaintiff is not required to recover thereon against this defendant.

Third Defense.

For a third and further defense this defendant says that the complaint herein does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

Wherefore, this answering defendant asks that this action be dismissed as against it and that it recover its costs herein expended.

MORRISON & PENCE and
NEAL & KINYON,

Attorneys for Flato Commission Co.

State of Idaho,

County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys in the above entitled action for defendant, the Flato Commission, that he has read the foregoing answer, knows the contents thereof, and that the facts therein stated are true of his own knowledge except as to the matters stated therein to be on information and belief, and as to those matters he believes them to be

true. That affiant makes this affidavit for the reason that the Flato Commission Company is a corporation and absent from the county where the attorney resides and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 15th day of April, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

Due service of the within answer with copy admitted this 15th day of April, 1905.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Answer of Flato Commission Company. Filed April 15, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Notice to Produce Papers.

To the Above-named Defendants, and Their Attorneys of Record, Morrison & Pence and Neal & Kinyon:

You are hereby notified to have and produce at the trial of the above cause to be used as evidence in the above cause in case the plaintiff so desires them, all letters written from the Boise office of the American Bonding Company to the eastern office either at Denver, Colorado, or Baltimore, Maryland, notifying the said company that suit had been commenced against J. C. Mills, sheriff of Boise County, to recover for the value of the sheep sold under the chattel mortgage foreclosure of the Flato Commission

Company, and notifying said company of a certain notice served upon Charles F. Neal as the agent of said company of the commencement of said suit under date of August 29, 1902.

Also all other letters and communications, the dates of which are unknown to the plaintiff, touching said above matter of notice or relating to or concerning a suit of Ralph Cowden vs. J. R. Mills, or in any way relating to the commencement of said suit or the trial thereof or relating to the matter of the giving of the indemnity bond in the matter of the foreclosure proceedings of the Flato Commission Company above referred to.

If said papers are not produced, the plaintiff will introduce secondary evidence of the same.

W. E. BORAH,
Attorney for Plaintiff.

Service of copy admitted this 28th day of April, 1905.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Defendants.

[Endorsed]: No. 249. Notice to Produce Papers. Filed April 28, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Stipulation Waiving Jury.

It is hereby expressly stipulated and agreed in open court by and between counsel for plaintiff and defendants that a jury in the above-entitled cause is waived, and it is

agreed that said cause shall be tried by the court without a jury.

W. E. BORAH,
Attorney for Plaintiff.
MORRISON & PENCE,
NEAL & KINYON,
Attorneys for Defendants.

[Endorsed] : No. 249. Stipulation Waiving Jury. Filed May 1st, 1905. A. L. Richardson, Clerk.

At a Stated Term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Monday, the 1st day of May, 1905. Present: Hon. JAS. H. BEATTY, Judge.

J. C. MILLS, Sheriff,

vs.

No. 249.

AMERICAN BONDING CO., et al.

Order Setting Case for Trial.

Now came the parties by their respective counsel and thereupon a jury was waived in open court in accordance with stipulation on file and it was ordered that said cause be set for trial before this Court not prior to the 20th inst.

[Title and Caption Omitted.]

Notice to Take Deposition of George A. Hawkes.

To J. C. Mills Jr., and W. E. Borah, his Attorney :

The above-named plaintiff will take notice that on Sat-

urday the 27th day of May, 1905, the defendants and each of them will take the deposition of George A. Hawkes, a witness to be used as evidence on the trial of the above-entitled cause, at the law office of James D. Pardee, Attorney at Law, Eagle Block in the city of Salt Lake, County of Salt Lake and State of Utah, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said depositions will be adjourned from day to day (Sundays and legal holidays excepted) between the same hours until they are completed.

MORRISON & PENCE,
NEAL & KINYON,
Attorneys for all Defendants.

Received copy of the above notice this 29th day of April, 1905, and consent is given that said depositions may be taken at the time and place in said notice specified, subject to all objections as to competency, relevancy and materiality.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Notice to Take Depositions.
Filed June 3, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Notice to Take Deposition of E d. H. Reid.

To J. C. Mills, Jr., Plaintiff, and W. E. Borah, his Attorney:

The above-named plaintiff, will take notice that on Monday, the 24th day of April, 1905, the said defendants and

each of them, will take the deposition of Ed. H. Reid, witness to be used as evidence on the trial of the above-entitled cause, at the Law Offices of Peete & Abrahams, No. 211 Continental Building, (corner 17th and Lawrence streets) in the city of Denver, County of Arapahoe and State of Colorado, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said depositions will be adjourned from day to day (not including Sundays and legal holidays) between the same hours until they are completed.

MORRISON & PENCE,
NEAL & KINYON,
Attorneys for Defendant.

Received copy of the above notice this 15th day of April, 1905, and consent is hereby given that said depositions may be taken at the time and place in said notice specified, subject to all objections as to competency, relevancy, and materiality.

W. E. BORAH,
Attorney for Plaintiff.

— — — — —
(Deposition of Ed. H. Reid.)

State of Colorado,
City and County of Denver,
(formerly Arapahoe County),—ss.

The deposition of Ed. H. Reid, a witness produced and sworn before me, Lucy W. Piper, a notary public in and for the city and County of Denver, (formerly Arapahoe County) on the 24th day of April, A. D. 1905, pursuant

(Deposition of Ed. H. Reid.)

to the attached notice. This deposition taken on the part of defendant, the American Bonding Company of Baltimore and the Flato Commission Company, in a certain action now pending in the Circuit Court of the United States for the State of Idaho, Central Division, Ninth Circuit, wherein J. C. Mills is Plaintiff, and the American Bonding Company of Baltimore and the Flato Commission Company are Defendants.

The said Ed. H. Reid, being duly sworn, to testify the truth, the whole truth, and nothing but the truth relating to this cause, deposes as follows:

Q. State your name, age, and place of occupation?

A. Ed. H. Reid. Wyncote, Wyoming. Am vice-president and general manager of the North Platte Canal and Colonization Co., the Wyoming and Nebraska Land and Cattle Co., and the Rawhide Ranch Co.

Q. In what business were you engaged in July, 1902 And with what concern?

A. In the livestock commission business, with the Flato Commission Co. of South Omaha, Nebraska.

Q. What, if any, position, did you hold with this concern at that time?

A. I was one of the directors of this Company, and I was, I suppose you might say, their General Western Agent.

Q. Are you the Ed. H. Reid who signed the so-called indemnity bond given in this case by the Flato Commission Company, and by the American Bonding Company of Baltimore as surety, and whose name, Ed. H. Reid as

(Deposition of Ed. H. Reid.)

director, agent and representative, is signed to the bond executed in this case?

A. Yes.

Q. What was the reason that the bond in question was given?

A. In the fall of 1901, some time about the 30th of November, one R. L. Shaw, then a resident of the State of Idaho, borrowed from the Flato Commission Company, \$18,626.55 and to secure such loan, he gave the Flato Commission Company, its successors and assigns, a chattel mortgage upon certain cattle and sheep, then claimed to be owned and possessed by him, and situate in the State of Idaho, being marked, branded and described as follows, to wit, about thirty-five hundred head of yearling wethers and wool, about thirty-five hundred head of ewes, their increase and wool; about three thousand mixed lambs and wool; also, some two hundred native two year old steers, steers branded PP or TT on left hip; sheep branded and marked with quarter circle C, made thus C with black paint. The Flato Commission Company actually paid Shaw the amount of money mentioned in said mortgage, as a loan. The property mortgaged was valued by Shaw at over \$36,000.00. In the early part of July, as I recollect it, the report came to Omaha, through Mr. Geo. A. Hawkes, our representative then in Idaho, that R. L. Shaw was supposed to have left the country. The Flato Commission Company then requested me to come to Idaho and to go over the territory with Mr. Hawkes

(Deposition of Ed. H. Reid.)

and look up these sheep and take actual possession of them. In following out these directions, I, together with Mr. Hawkes, came to Boise, Idaho, on or about July 21, 1902, and on the following day we employed Messrs. Hawley and Puckett to look after the interests of the Flato Commission Company, in the matter of getting possession of the sheep covered by the Shaw mortgage. On the same date, affidavit and notice required by the statutes of Idaho for the foreclosure of chattel mortgages by notice and sale, were drafted by Mr. J. H. Hawley, upon the representations and statements made to him by Mr. Hawkes and myself. Then, while we were there, Mr. Hawley called up Sheriff Finney and talked with him and he refused to make the levy in his county, unless the Flato Commission Company would furnish him with an indemnity bond, he stating to Mr. Hawley in our presence, but over the 'phone, that he would do nothing whatever looking to the taking of possession of the sheep in controversy under the process known as notice and sale, or otherwise, for the Flato Commission Company, until he had been indemnified; and growing out of the conversation between Mr. Hawley, Mr. Hawkes and myself on the one part, and Sheriff Finney on the other, the amount of the bond was at that time fixed as ten thousand dollars. On the following day, I returned to Salt Lake, from which place, I was recalled on July 26, 1902, for the purpose of executing an indemnity bond to the sheriff of Boise County Idaho, Mr. J. C. Mills, the plaintiff in this case. When

(Deposition of Ed. H. Reid.)

I returned I was informed by Mr. J. H. Hawley and also by our Mr. Hawkes, that they had located two bands of the Shaw sheep covered in our mortgage, in Boise County, and that Sheriff Mills, would not take any steps looking to a recovery of the sheep in foreclosure proceedings, until he had first been indemnified, with an indemnity bond for the value of the sheep, and twenty thousand dollars was suggested as the amount of the bond that should be given. Thereafter, for the purpose of procuring Sheriff Mills to make the levy in question, and to take possession of said sheep, under the process known as affidavit and notice, and sell the same upon notice and sale, as provided by the statutes of Idaho, and because of the fact that Sheriff Mills refused to do any act of thing whatever in and about the making of any such levy, until so indemnified, I, as representative of the Flato Commission Company, on the 26th day of July, 1902, executed the indemnity bond, a copy of which is attached to the complaint herein, for and on behalf of the Flato Commission Co., and at my request and on my application, said bond was executed by said American Bonding Company of Baltimore, as surety. On the same day, the affidavit and notice required in foreclosure of chattel mortgages to be executed and signed by the mortgagee, or his agent or representative, were duly executed and signed and they, together with the bond of indemnity herein referred to, were mailed to Sheriff Mills. And thereafter, the sheriff proceeded to levy upon the sheep described in the affidavit and notice, being the sheep

(Deposition of Ed. H. Reid.)

mortgaged by said R. L. Shaw to the Flato Commission Company. The sheep mortgaged by R. L. Shaw to the Flato Commission Company are the only sheep which the bond of indemnity contemplated being taken in the foreclosure proceedings, and if any other sheep were taken, they were not taken by the authority or under the direction of myself, or any other representative of the Flato Commission Company.

Q. Have you stated all of the surroundings of, and reasons for, the giving of the bond in question?

A. Yes, I think they are fully covered by my preceding answers.

Q. How far do you reside from Boise, and do you expect to be in the locality of Boise, in the near future?

A. My home is at Wyncotte, Wyoming, about one thousand miles from Boise. I expect to remain there permanently.

ED. H. REID.

State of Colorado,
City and County of Denver,
(formerly Arapahoe County),—ss.

I, Lucy W. Piper, a notary public in and for said county hereby certify that the above named Ed. H. Reid was by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth relating to said cause; that his deposition was reduced to writing by me, and said deposition was taken at the time and place in said notice specified, in the city and county of Denver,

being in place identical with the former county of Arapahoe, in the State of Colorado, and was taken on the 24th day of April, A. D. 1905, between the hours of 9 A. M. and 6 P. M. of said day.

In testimony whereof I have hereunto set my hand and Notarial seal this 24th day of April, A. D. 1905.

My commission expires March 2d, 1907.

[Seal]

LUCY W. PIPER.

Notary Public.

[Endorsed]: No. 249. Deposition of Ed. H. Reid. Filed April 27th, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Notice to Take Deposition of James C. Dahlman.

To J. C. Mills, Plaintiff, and W. E. Borah, his Attorney :

The above-named plaintiff, will take notice that on Saturday, April 29th, 1905, the said defendants, and each of them, will take the deposition of James C. Dahlman, witness to be used as evidence on the trial of the above-entitled cause, at the Law Offices of J. H. Van Duesen, New York Life Bldg., Omaha, Douglas County, Nebraska, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said depositions will be adjourned from day to day (not including Sundays and legal holidays) between the same hours until they are completed.

MORRISON & PENCE, and
NEAL & KINYON,

Attorneys for Defendants.

Received copy of the above notice this 20th day of April, 1905, and consent is hereby given that said depositions may be taken at the time and place in said notice specified, subject to all objections for competency, relevancy and materiality.

W. E. BORAH,
Attorney for Plaintiff.

Deposition of James C. Dahlman.

Deposition of James C. Dahlman, the witness, taken before me, Nettie Floren, a notary public, to be used in an action wherein J. C. Mills, Jr., late sheriff of Boise County, Idaho, in plaintiff, and the American Bonding Company of Baltimore and the Flato Commission Company are defendants, pending in the Circuit Court of the United States for the District of Idaho, Central Division, in pursuance of the annexed notice, and at the time and place therein stated. No appearance on behalf of plaintiff. B. F. Neal of Neal & Kenyon of Boise, Idaho, appearing on behalf of each of defendants. Thereupon defendants produced the following witness, to wit:

JAMES C. DAHLMAN, being by me first duly examined, cautioned and solemnly sworn, as hereinafter specified, depose and saith as follows:

(Examination by Mr. NEAL.)

Q. You may state your name, place of residence and occupation.

(Deposition of James C. Dahlman.)

A. James C. Dahlman; South Omaha, Nebraska; livestock commission business.

Q. For how long have you been engaged in the livestock commission business at South Omaha?

A. About seven years.

Q. For how long have you been engaged in the livestock business?

A. For thirty years.

Q. For how many years have you been familiar with the handling of sheep and other livestock?

A. All my life.

Q. In what States or localities have you been engaged in the sheep business other than as a livestock man of South Omaha?

A. In Texas, Wyoming and Montana.

Q. What was the nature of your business as a livestock man while in these various States?

A. I bought, sold, raised and shipped.

Q. Are you the James C. Dahlman who was secretary and manager of the Flato Commission Company in the year 1902 at the time of the beginning and trial of the actions which were tried in Canyon County, Idaho, entitled Ralph Cowden vs. William Finney, Sheriff of Blaine County, Idaho, and Ralph Cowden vs. J. C. Mills, Jr., Sheriff of Boise County, Idaho, in which action Cowden sought damages as for conversion for the taking of certain sheep which said sheriffs had levied on as the property of the Flato Commission Company?

(Deposition of James C. Dahlman.)

A. Yes, sir.

Q. You were present at this trial also?

A. Yes, sir.

Q. Are you acquainted with the market value, and do you know how the market value is determined in the United States of livestock, as, for instance, sheep?

A. Yes, sir.

Q. Will you explain?

A. Well, in the first place, they are all gauged by the price that they bring on the different livestock markets at Chicago, South Omaha, Kansas City, and St. Joseph.

Q. During the years in which you state you were engaged in the business of buying, selling and shipping sheep, prior to the time that you began business at South Omaha in the livestock commission business, what method or basis did you use in determining the prices at which you bought and sold sheep and other livestock?

A. Always from what they will sell at on the market at South Omaha, Chicago, Kansas City and St. Joseph. In buying the sheep on the range, you would figure on what they bring on the market and the price of wool.

Q. In your experience as buyer and seller of sheep prior to the time that you began business on the stock exchange of South Omaha, how did you determine the prices which you paid for sheep, or the prices at which you sold sheep, as the case might be?

A. In buying sheep on the range, we always manage to keep posted as to what they were selling at on the dif-

(Deposition of James C. Dahlman.)

ferent livestock markets. We tried to get daily reports, if possible. And the prices that are quoted that they are bringing on the markets, that fixes the price on the range.

Q. Do you know of any other method which is in use in determining the value of sheep and other livestock, except by reference to the prices at which they are bought and sold in the various principal markets mentioned by you?

A. That is the only way prices can be fixed. They all have to come to the market when they are ready for market and it is what they bring on the markets that a man must figure on paying out in the country.

Q. Is there a market value for wethers during the period of July and August?

A. Yes, sir.

Q. If wethers are bought during the period, say during the months of July and August of any year, what would be the ordinary and usual prices which would be paid for them, and in fact, be their market value? I mean with reference to what they would sell for packers' purposes on the several markets mentioned?

A. A man would simply consider the price they bring on the market. He would not be buying them at that time of the year for what wool he could get off of them as they usually shear in May and June and he would have to figure altogether on what a wether would bring on the livestock market.

(Deposition of James C. Dahlman.)

Q. What would be the value of wethers, one and two years old, in the State of Idaho, having reference to the price at which they would sell upon the markets at Omaha, St. Joseph or Kansas City? I mean would it be the same price, more or less?

A. A wether weighing 100 pounds bought in Idaho and shipped to South Omaha or Chicago would cost somewhere from 75 cents to \$1.00 for shipping, counting the shrinkage, freight and expense of handling them, so that a wether worth \$3.00 on the market would be worth about \$2.50 in Idaho. If bought by the hundred, if a man could get \$3.50 a hundred for them on the market, he could not afford to pay more than \$2.50 a hundred for them in Idaho as it would take about \$1.50 a hundred for shipping and handling.

Q. At what age are wethers usually marketed?

A. Well, they are shipped from one year old, up. The yearling wether is usually bought for feeding purposes. The older wethers would go for mutton but the price of the feeding wether depends largely on the corn crop. If there is a good corn crop, there is a big demand for yearling wethers, but very few are for sale for mutton. The older wethers usually go for mutton. But the price, where there is a demand for feeder wethers, is usually about as high as the price paid for mutton. A yearling wether is worth more than an older wether for feeding. Substantially all wethers are marketed at one and two

(Deposition of James C. Dahlman.)

years old, occasionally a bunch is held over till they are three and four, but not very often.

Q. When yearlings are bought for feeding purposes as described by you, what is taken as a standard by which to measure their values?

A. The price that mutton is selling at and the price that feeders are selling at in the principal markets.

Q. In your experience as described by you as a buyer, shipper and seller of sheep, have you had any experience with and are you familiar with the handling and the market value of lambs?

A. Yes, sir.

Q. How is the market value of lambs determined and when are they usually sold?

A. The value is determined by the price they are bringing on the livestock market. Seventy-five per cent of all the lambs raised are sold in the fall of the year, either for feeders or killers.

Q. About when does the lamb market begin?

A. Begins about the first of August.

Q. Extending about how late in the fall?

A. Extending till about the first of December.

Q. In determining the price of lambs on the range in Idaho, whether for feeders or killers, what would you take in consideration?

A. What they are bringing on the livestock market and what it would cost to ship and handle them.

Q. About how much per hundred pounds, would it cost

(Deposition of James C. Dahlman.)

to ship and handle lambs, say in Central Idaho, or in Blaine County or Boise County, Idaho?

A. Cost about 75 cents a hundred pound.

Q. And about how much per individual lamb?

A. Cost about 50 cents a head to ship and handle a lamb from Idaho on either of the livestock markets.

Q. Do you know in your experience as a feeder, buyer, and seller of sheep, and in your experience as a livestock commission man, both or either, of any value for lambs, except as it is fixed and determined relatively by the prices at which they are bought and sold in the principal markets which you have mentioned?

A. No, sir.

Q. Is there any newspaper, or any book, or any record of any kind which is regarded by those engaged in the business and the public generally as an authority of record of the daily sales of sheep of the various markets of the United States?

A. Yes, sir. Each market has from one to three daily papers that give the reports of the bulk of the sales that are made each day of sheep, cattle or hogs.

Q. And give an accurate report of the prices at which sheep of the different grades are sold each day?

A. Yes, sir.

Q. Is the "Daily Drovers' Journal Stockman" of South Omaha, Nebraska, a paper which is generally taken and distributed and read among livestock men and among

(Deposition of James C. Dahlman.)

farmers and stock-raisers who are interested in the sheep and other livestock business?

A. Yes, sir.

Q. Is the paper of general circulation?

A. Yes, it is a paper of large circulation taken by most of the stockmen in the west.

Q. Does it contain accurate statements of the daily sales of sheep and other livestock at the markets of South Omaha, and other places where livestock is sold?

A. Yes, sir.

Q. It gives a full report of the South Omaha sales and then gives the number of cattle, hogs and sheep received at each of the other markets and whether it is higher or lower than the preceding day, and generally a synopsis of the highest, medium and lowest prices for the day on each class of stock. Besides that, each stock exchange gets the market reports from the different markets each morning before any sales are made. For instance, the Chicago exchange would wire the South Omaha Exchange the prices on hogs, cattle and sheep which are marked up on a blackboard of the exchange for the benefit of each commission house and also the stockmen that are on the market on that day. Like reports are also sent from Kansas City, and in a similar manner South Omaha markets are wired by the stock exchange to Chicago, Kansas City and the other principal livestock markets and these posted.

Q. Is the "Daily Drovers' Journal Stockman" published at South Omaha, Nebraska, considered a reliable

(Deposition of James C. Dahlman.)

and accurate reporter of the livestock markets, especially the livestock market of South Omaha, Nebraska?

A. Absolutely.

Q. It is generally received and held to be a correct report of exchange markets?

A. Yes, sir. It is patronized heavily by the commission men, and they would have to give correct reports in order to get the patronage, and by stock-raisers and drovers throughout the West.

Q. Were you the representative of the Flato Commission Company who took the R. L. Shaw mortgage?

A. I did not prepare the mortgage. I was there when it was made and knew of the details of the transaction at the time. The company paid and advanced to Mr. Shaw the amount of money mentioned in the mortgage, being something over \$18,000. I have not now the exact figures with me.

Q. Do you keep posted on the market value of sheep at the various markets of the United States?

A. Yes, sir.

Q. Are you acquainted with the value of lambs in the fall of 1902, say for the period—July 23d to October 1st, inclusive?

A. Yes, sir.

Q. State what the market value of good average lambs was at that time?

A. They sold from \$3.75 to \$4.50 per hundred.

Q. And what is the weight of an average lamb?

(Deposition of James C. Dahlman.)

A. They weigh from 55 to 60 pounds.

Q. Are you acquainted with the price of ewes during the same period?

A. Yes, sir.

Q. What was the price of ewes during the same period?

A. They were worth from \$2.75 to \$3.00 per hundred if they were killers, that is, if they were dry ewes and fit for killers. If they had been suckling a lamb and were thin and would have to sell for feeders, they would sell from \$2.50 to \$3.25 per hundred.

Q. And about what price is the average weight of what you term killers, that is, ewes of the marketable age mentioned?

A. They would weigh from 80 to 100 pounds and an ewe that had been suckling a lamb would weigh from 65 to 80 pounds.

Q. What was the market value during the time mentioned of ewes older than three year olds?

A. They were sold all the way from \$1.25 to \$2.25 per hundred. It would depend on the condition that they were in, and, whether they had good mouths. A good mouthed ewe from four to seven years old sold at from \$2.00 to \$2.25. One that was thinner and did not have a good mouth sold for \$1.25 to \$1.75 per hundred.

Q. And what is the usual weight of ewes of these ages?

A. They would weigh from about 70 to 75 pounds.

Q. The values which you have given for lambs and ewes, are they founded upon the prevailing prices at the

(Deposition of James C. Dahlman.)

markets, or are these values the values they ought to sell for and did sell for on the range?

A. The price I am quoting are what they would bring on the market. To compare the range price with that, it would be necessary to take off from 75 cents to \$1.00 a hundred for freight and expenses that it would cost to ship these sheep to the market.

Q. How much per hundred would you take off of lambs?

A. I would take off from 50 to 75 cents per hundred.

Q. And off of ewes?

A. About \$1.00 a hundred.

Q. Do you expect to be in the vicinity of Boise, Idaho, some time in the near future?

A. No, sir.

Q. How far is it from here to Boise, Idaho?

A. About fifteen or sixteen hundred miles.

JAMES C. DAHLMAN.

State of Nebraska,

County of Douglas,—ss.

I, Nettie Floren, a notary public within and for the County of Douglas, State of Nebraska, do hereby certify that James C. Dahlman was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by myself in the presence of the witness and was subscribed by the said witness in my presence and was taken at the time and place in the an-

nexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto affixed my official seal at Omaha, Nebraska, this 29th day of April, A. D. 1905.

[Seal]

NETTIE FLOREN,
Notary Public.

[Endorsed]: No. 249. Deposition of James C. Dahlman. Filed May 3d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for the District of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise

County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE AND FLATO COM-
MISSION COMPANY,

Defendants.

Depositions of O. W. Eaton and John R. Bonson.

United States of America,

State of Nebraska,

County of Hall,—ss.

Be it remembered that on this 26th day of April, A. D. (in the year of our Lord), one thousand nine hundred and five (1905) I, O. A. Abbott, a notary public, duly com-

missioned and qualified for and residing in the county and State aforesaid, at the office of Abbott & Abbott in the city of Grand Island, in the county of Hall and State of Nebraska aforesaid, between the hours of nine (9) o'clock A. M. and six (6) o'clock P. M. of said day, in pursuance of the notice and agreement hereunto attached did call and cause to be and personally appeared before me at said office at the time and place in said notice specified the following named persons, to wit:

O. W. EATON and JOHN R. BONSON, sundry witnesses in behalf of the above named defendants to testify and the truth to say on the part and behalf of the defendants above named in a certain suit and matter in controversy now pending in the Circuit Court of the United States, Ninth Circuit, for the District of Idaho, Central Division, wherein J. C. Mills, Jr., late sheriff of Boise County, Idaho, is plaintiff, and the American Bonding Company of Baltimore and the Flato Commission Company are defendants, and the said O. W. Eaton being about the age of 60 years and having been by me first duly cautioned and solemnly sworn to testify to the truth, the whole truth and nothing, but the truth in the matter of controversy aforesaid, I did carefully examine the said O. W. Eaton and he did thereupon depose, testify and say as follows, to wit:

Neal & Kinyon appearing on behalf of defendants; no counsel appearing on behalf of plaintiff.

(Deposition of O. W. Eaton.)

(Examination by Mr. B. F. NEAL.)

O. W. EATON.

Q. State your name and place of residence?

A. O. W. Eaton, Wood River, Nebraska.

Q. How long have you resided at your present home?

A. About 15 years.

Q. Were you in the State of Idaho and in the vicinity of Caldwell in the State of Idaho during the year 1902?

A. Yes, sir; I think we arrived there, myself and Mr. J. R. Bonson, about the 8th of June. I remained there in that locality and I think I left there somewhere between the 12th and 15th not later than that, after being up in the neighborhood of Caldwell and Weiser.

Q. Are you acquainted with one W. L. Shaw?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. He fed at my place either four or five years before 1902, and was there five or six months.

Q. Are you acquainted with one J. B. Gowan?

A. I never met Mr. Gowan until that time that we were at Caldwell in the summer of 1902.

Q. Are you acquainted with one Ralph Cowden?

A. Yes, sir, I met him in the summer of 1902, at Caldwell, Idaho.

And it being about the hour of 12 o'clock noon and the notary being necessarily engaged in other business during the rest of the day, the further taking of these depositions is continued until tomorrow, Thursday, April 27th, A. D.

(Deposition of O. W. Eaton.)

1905, at the hour of nine (9) o'clock A. M. at the same place.

Office of Abbott & Abbott, City of Grand Island, County of Hall and State of Nebraska.

B. F. Neal, attorney for defendants, and the witnesses, O. W. Eaton and John R. Bonson, being present, the taking of the depositions is proceeded with pursuant to the adjournment as aforesaid.

On request of counsel for defendants the witness O. W. Eaton is withdrawn and the examination of the witness John R. Bonson commenced, the further examination of the witness O. W. Eaton being shown herein hereafter.

I, O. A. Abbott, the notary public within and for the aforesaid county and State and at the aforesaid time and place in the aforesaid controversy do certify that the said John R. Bonson, being of about the age of 31 years, and having been by me first duly cautioned and solemnly sworn to testify to the truth, the whole truth and nothing but the truth in the matter in controversy examined the said John R. Bonson and that he did thereupon depose, testify and say as follows, to wit:

(Examination of Mr. B. F. NEAL.)

JOHN R. BONSON.

Q. State your name, occupation and place of residence?

A. John R. Bonson. I live at Scotia, Nebraska, and am engaged in rachine, farming and cattle feeding.

Q. How long have you lived at Scotia, Nebraska?

A. About one year.

(Deposition of John R. Bonson.)

Q. Where did you reside prior to that time?

A. In Grand Island, Nebraska.

Q. In what business have you been engaged in in the last 10 or 12 years?

A. Buying and selling stock, feeding and farming some.

Q. What class of stock have you been engaged in buying and selling?

A. Cattle, sheep and hogs.

Q. Were you familiar with the sheep business, with the handling of sheep, buying and selling of sheep, quality and grades and prices in the year 1902, and prior thereto?

A. Yes, sir, I aimed to keep posted on the market as close as possible.

Q. Are you acquainted with one J. B. Gowan?

A. Yes, sir.

Q. Where did you become acquainted with him?

A. At Grand Island about 10 or 12 years ago.

Q. Where did he live in the year 1902, if you know?

A. Caldwell, Idaho.

Q. Are you acquainted with one R. L. Shaw?

A. Yes, sir.

Q. Where did you get acquainted with him?

A. At Grand Island, about seven years ago.

Q. Where did he live in the year 1902?

A. I understood his family lived somewhere in Portland, Oregon, but he spent a great deal of his time in Idaho where he had sheep interests.

(Deposition of John R. Bonson.)

Q. Was he at that time or had he been interested in business with your father, Nick Bonson?

A. They had a good many transactions but as to their being in partnership I don't think they had been.

Q. Did you have any correspondence with Gowan during the year 1902 or did you see any correspondence from him with reference to his having any sheep for sale?

A. I seen a letter that he had written to Nick Bonson offering quite a large bunch of sheep for sale or that they would offer them a little later in the season, this being sometime during the month of May, 1902.

Q. Do you know where that letter is?

A. I destroyed it, it was burned up or destroyed.

Q. What sort of sheep did he say in the letter that he had for sale?

A. He represented several bands of wethers known as the Shaw and Gowan wethers and several bands of ewes and lambs that he spoke of as the Cowden and Gowan sheep.

Q. Did he price them to you at that time?

A. No, sir.

Q. What did you do if anything with reference to this letter in the matter of these sheep being for sale?

A. Well, I wrote to O. W. Eaton of Wood River, Nebraska, asking him if he would care to take a trip out there to Idaho with a view to looking at these sheep or what other bands we might find for sale.

Q. What further was done then than the writing?

(Deposition of John R. Bonson.)

A. About the 5th of June we went out there and stopped at Caldwell, Idaho.

Q. Yourself and O. W. Eaton?

A. Yes, sir.

Q. Where did you board and room while in Caldwell, Idaho?

A. When we first got there we stopped for a day or two at the depot hotel.

Q. And after that time?

A. After that we took our meals at different places and slept at Gowan's house.

Q. During the time that you were stopping at Gowan's house which as I understand you was a day or two after you got there did you have any conversation with Gowan with reference to the Shaw sheep?

A. Yes, sir, we did.

Q. Just tell what he said?

A. He claimed that he had charge of both the Shaw wethers and the Shaw and Gowan wethers and also had charge of the Cowden and Gowan ewes and lambs, that the wethers was running over near Hailey, Idaho, and that the ewes and lambs were out near Council.

Q. Did you talk to him at this time about buying these sheep or any portion of them?

A. I told him that I might buy the wethers if the price was right.

Q. What did he say about it?

(Deposition of John R. Bonson.)

A. He said he wouldn't price the wethers until Shaw returned from Portland, Oregon.

Q. Did he tell you when he was expecting Shaw back?

A. In a few days, he said.

Q. Did he tell you anything about the character and condition of these sheep, I mean the Shaw and the Shaw and Gowan wethers?

A. He said they were yearlings and two year old wethers and that they ought to be in fair flesh.

Q. Tell you anything about what they were worth?

A. No, sir, not at that time.

Q. He did afterwards?

A. He afterwards asked me, about two weeks later he asked me, if they were worth \$2.50 per head and I told him no, that I wouldn't think of giving that price for them on the present market.

Q. Was that conversation with reference to the price at a time when you had personally examined the sheep?

A. Yes, sir, that was on the ground while we were looking at the sheep over near Hailey, Idaho.

Q. During the week or more that you were stopping sleeping at his home with Mr. Eaton and stopping with him immediately after your arrival at Caldwell, Idaho, did you have any other conversation with him about the bands of wethers in Boise County, near Hailey?

A. We had a good many conversations but they were all of about the same nature, that he had charge of the

(Deposition of John R. Bonson.)

sheep but that he wouldn't offer them for sale or price them until Shaw returned from Portland, Oregon.

Q. Did he give you any reason why he wouldn't offer them for sale or name any price?

A. Well, from his conversation Shaw was the main owner but that Gowan had charge of the sheep.

Q. What was the nature of the interest which Gowan claimed to have in these sheep as evidenced by his conversations with you at the time I mean in the Shaw or Shaw and Gowan wethers?

A. From his conversation I took it that he got a thousand dollars a year for managing the business, running these sheep.

Q. Then I am correct in the statement that Gowan gave you to understand that his sole interest in the Shaw or the Shaw and Gowan wethers was that Shaw owed him for his services in taking care of the sheep?

A. Yes, sir, he owed him for his services in taking care of the sheep and also that there was an unsettled account between them for an undivided feeding account that hadn't been settled at that date between Shaw and Gowan.

Q. Growing out of a partnership deal in feeding other sheep?

A. Other sheep at previous times in Nebraska and also in buying and selling several bands of sheep in Wyoming and Idaho in the winter of 1901 and 1902.

Q. That is the winter preceding the one that you were there?

(Deposition of John R. Bonson.)

A. Yes, sir.

Q. Did you have any conversation with J. B. Gowan shortly after your arrival there in which he described to you the financial condition of Shaw?

A. Not the first few days he didn't say anything about the financial condition of R. L. Shaw during the first few days but later he did speak of Shaw as having mortgaged all his sheep to the George, Adams Frederick Company of Omaha and the Flato Commission Company, and that Shaw was gone and that he thought he had skipped the country for good.

Q. About what date did you have this conversation with Gowan in which he told you about Shaw having mortgaged his sheep to these different people that you have mentioned?

A. About the 17th or 18th of June, 1902.

Q. Did he at that time or at any other time tell you when it came to his knowledge that these sheep were mortgaged to the Flato Commission Company and the George, Adams Frederick Company or to either of them?

A. Yes, sir, he said he had just looked up the records and found out.

Q. Did you have any further conversation with him at this time with reference to his affairs and Shaw's?

A. Yes, he said that he had been hoping that Shaw would return and settle up with him and pay him what Shaw was owing him, he claimed that there was quite an amount of money due him on an old feeding account and

(Deposition of John R. Bonson.)

the profits of some previous deals in Idaho, Wyoming and Nebraska, from feeding sheep and that he also had advanced some of his own money for paying the expenses of running the Shaw and Gowan sheep.

Q. When you speak of the Shaw and Gowan sheep you mean the sheep which Gowan gave you to understand that he received a thousand dollars a year for running?

A. Yes, sir.

Q. That is the two or three bands of Shaw wethers which were near Hailey?

A. Yes, sir.

Q. Did he tell you what his relations to Shaw were in the former deals in Nebraska, Wyoming and Idaho?

A. It was a partnership deal, Gowan was interested in the profits or losses of the deals.

Q. About how long was it after you first went out there and first met Gowan in June, 1902, that you had this conversation with him in which he told you that these sheep were all mortgaged?

A. About ten days.

Q. Up to that time, that is up to the day when he told you these sheep were mortgaged to the parties whom you have mentioned who had Gowan always spoken of as the owner of these sheep and what had he always mentioned his relation to them as being?

A. Well, he represented them as the Shaw wethers or sometimes he would speak of them as the Shaw and

(Deposition of John R. Bonson.)

Gowan deal or the Shaw and Gowan sheep and that he had charge of them or that he was running the sheep.

Q. Did you meet and were you acquainted with Ralph Cowden of Caldwell, Idaho, prior to the 17th day of June, 1904?

A. I think I first met Cowden about the 13th or 14th of June at Caldwell, Idaho, at his office.

Q. What business was he engaged in at that time?

A. He was engaged in the lumber business.

Q. Have any conversation with him about buying sheep at that time?

A. I told him we were out looking over the country to see what could be bought.

Q. Did he have any sheep for sale at that time?

A. He had some but he didn't offer them for sale.

Q. Did he describe them to you?

A. Yes, sir, he described several bands of ewes and lambs that he had up near Council and that he and Gowan were in the deal.

Q. Did he describe any other sheep than ewes and lambs that were owned by him or by him and Gowan?

A. No, sir.

Q. On the same date did you have any conversation with him with reference to R. L. Shaw?

A. Yes, sir, he spoke of Shaw being away and that he hoped he would come back and fix up some business matters with Gowan because he wanted Gowan to put some money into their sheep deal.

(Deposition of John R. Bonson.)

Q. Did he say anything further about Shaw at that time?

A. Not at that date.

Q. Did he at that time say anything to you about having made a purchase of the Shaw or Shaw and Gowan sheep?

A. No, sir.

Q. Did he say anything to you at that time about owning the Shaw or Shaw and Gowan sheep?

A. No, sir.

Q. Was there anything said in the conversation about the wethers known as the Shaw or Shaw and Gowan wethers?

A. Yes, sir, he spoke of Gowan as having charge of them and running the sheep but nothing further than that.

Q. When did you next after the date which you have mentioned which I believe you have described as the 13th of June, did you have any conversation with Cowden with reference to the Shaw wethers?

A. About the 21st of June Cowden told me that he had a bill of sale of these wethers given him by Gowan and that the sheep belonged to him now, he also told me a day or two preceding the 21st of June, 1902, that Shaw had mortgaged his stuff and left his stuff in bad shape financially and that he thought he had skipped the country for good.

Q. Did Cowden at the time mentioned in the later part of your answer when he told you about his belief that

(Deposition of John R. Bonson.)

Shaw's property was mortgaged go into details as to why he thought this to be so and if so state what they were?

A. I don't think he did.

Q. Did he state to you at that time when it first came to his knowledge that Shaw had mortgaged his stuff?

A. He didn't tell me when it came to his knowledge but it was a day or two previous to about June 21st that he knew it.

Q. Did he at any time tell you when he first found out that Shaw's stuff as you speak of was mortgaged?

A. No, sir, any more than when I first met him he never mentioned the matter of Shaw's stuff all being mortgaged, it wasn't mentioned during our first conversations at all.

Q. At the time when he told you, one or more days prior to June 21st, 1902, that the Shaw sheep were mortgaged or the Shaw stuff as mentioned by you, had he ever told you that he claimed to have any interest whatever of any kind in the so-called Shaw or Shaw and Gowan wethers?

A. He never represented to me as having any interest in them at all prior to the time that he told me that he had a bill of sale of them.

Q. Are you positive that the date when he first informed you that he had a bill of sale of the Shaw sheep or the Shaw and Gowan wethers was of a later date than the date on which he told you that all of Shaw's stuff was mortgaged?

A. Yes, sir, it was at a later date, several days later.

(Deposition of John R. Bonson.)

Q. Had you and Cowden ever had a talk with reference to what stuff Shaw had in Idaho, or putting it in another way, what property and what sort of property do you mean when you say Shaw's stuff?

A. I meant the several bands of yearlings and two year old wethers near Hailey, Idaho.

Q. Was that the reference made by Cowden at the different times when he spoke to you of Shaw's stuff being mortgaged?

A. Yes, sir.

Q. Did he ever speak to you of Shaw having any other property that the different bands of one and two year old wethers?

A. No, sir, he never spoke of Shaw having any other interests in that country outside of the wethers.

Q. Do you know how many head there were and where they were supposed to be located?

A. They were about 30 miles southwest of Hailey, I take it to be southwest the way we drove going there.

Q. How did he speak of their location?

A. He spoke of them as being in the Hailey Country.

Q. Prior to the 21st of June, 1902, when Cowden first told you that he had a bill of sale for the Shaw wethers had you ever had any conversation with him with reference to the purchase of these wethers?

A. Yes, sir, I told Cowden that on Shaw's return I might go out and take a look at them, the wethers, I mean, with a view of buying them.

(Deposition of John R. Bonson.)

Q. How did you come to tell Cowden these facts?

A. Cowden asked me if I was going out to look at them

Q. When was it that Cowden told you that the Shaw sheep were mortgaged with reference to the time that Gowan had told you that Shaw had mortgaged them?

A. It was at a later time when Cowden told me that when Gowan told me, or it was the same time but a day or so later.

Q. Did Gowan ever tell you in round numbers the amounts of the mortgages which George, Adams Frederick Company and the Flato Commission Company held against these sheep?

A. Yes, sir, he told me that George, Adams Frederick Company held about \$16,000.00 and the Flato Commission Company about \$18,000.00.

Q. Did he ever tell you anything about why these mortgages were given and what was done with the money?

A. No, sir.

Q. Did Cowden ever tell you when the bill of sale in question and to which you have referred was executed to him by J. B. Gowan?

A. It was about the 21st or 22d day of June, 1902, that he made the remark to me that Gowan had just given him a bill of sale for them.

Q. You are sure that those are the words, "had just given him a bill of sale," are you?

A. Yes, sir.

(Deposition of John R. Bonson.)

Q. Had he ever prior to that date ever claimed to have any interest in the Shaw or Shaw and Gowan wethers?

A. No, sir.

Q. Had J. B. Gowan ever prior to that date claimed to have any interest as owner in the so-called Shaw or Shaw and Gowan wethers?

A. No, sir, he never spoke of the sheep as him being one of the owners, but he did make the remark previous to that time that if he sold us the sheep he would sell them as the Shaw wethers and he did claim also that Shaw was owing him for money advanced in taking care of these sheep and an unsettled profit on some former deals or an undivided profit on some former deals.

Q. Had he ever at any time offered to sell these sheep to you as his sheep?

A. No, sir.

Q. Had he ever offered to sell them to you as the sheep of Shaw and Gowan?

A. No, sir, he wouldn't price me the sheep at all nor offer me the sheep for sale until after Shaw's return from Portland, Oregon, but Shaw never returned but after June 22d, or about the 23d I went to Hailey, Idaho, and there met Gowan and we went out to look at the sheep and he offered the sheep for sale as the Cowden wethers.

Q. Did he tell you that they were the same sheep that he had before described as the Shaw wethers?

A. No, sir, he didn't but he described the brands on

(Deposition of John R. Bonson.)

the wethers previously as being the Shaw brands and when we got there those were the brands the sheep had.

Q. Describe the brands?

A. I noticed some with a quarter circle G brand and some with an S brand and a quarter circle G brand.

Q. All made with black paint?

A. Black or red, the brands had growed dusty and you couldn't tell whether it was red or black paint.

Q. Had Gowan described to you the brands which were on the Shaw wethers prior to the time when you went up there?

A. Yes, sir.

Q. And were the brands of which you have just given a description the ones which he told you were on the Shaw wethers?

A. Yes, sir.

Q. What were the brands which you found upon the Cowden wethers which Gowan offered for sale to you about the 23d of June, 1902, in the vicinity of Hailey, Idaho?

A. They were branded a quarter circle G with black or red paint and some branded S and a quarter circle G with black or red paint. I say black or red paint on account of the brands being full of dust and you couldn't tell originally whether it had been black paint or red paint.

Q. Did the brands correspond on the location on the sheep described by Gowan as the Shaw sheep prior to the time when you went there into the Hailey country with

(Deposition of John R. Bonson.)

the location and brands on the sheep which he showed to you when you went there?

A. They were represented as being branded on the back with that brand and that's the way I found them branded.

Q. Did you ever have any conversation with J. B. Gowan while with him in the vicinity of Hailey on or about the 23rd of June, 1902, as to whether the sheep which he showed you were the same sheep, the same identical sheep which he had before talked to you about as belonging to R. L. Shaw and being for sale?

A. Yes, he said he had sold the sheep to Cowden and that he would sell me the sheep as Cowden's sheep.

Q. At the time that you were up there to see them did he make you any offer on these sheep, any price that he would sell them at?

A. He asked me if I would give \$2.50 a head for them.

Q. What did you say to that?

A. I told him they wasn't worth \$2.50, and that if I was buying them I would give \$2.00.

Q. What further conversation was there had at this time as to the value of these sheep?

A. Well, I don't remember.

Q. How many bands of Shaw sheep or as they were then called Cowden sheep were shown you by Gowan when you were in the vicinity of Hailey on or about the 23d of June, and about how many head if you know?

A. There was two bands of about twenty-eight or twenty-nine hundred each, that was the amount the herder

(Deposition of John R. Bonson.)

claimed there was in the two bands that is 2,800 or 2,900 in each band or 5,600 or 5,700 in the two bands.

Q. Do you remember who was herding these sheep?

A. No, sir, I don't, the foreman's name was Parks, I believe.

Q. You looked these sheep over carefully at the time that you were there?

A. Yes, sir, I did.

Q. What condition were they in, what grade of sheep?

A. They were what we would call a heavy pelted sheep, not the best of sellers but in fair flesh.

Q. Do you know what the value of such sheep was in the summer of 1902?

A. I could only tell by referring to the market reports of that date owing to lapse of time.

Q. Referring back to your conversation with Cowan with reference to Shaw and these sheep did Cowden at any time prior to June 21st tell you anything further than what you have already stated as to Shaw having mortgaged his sheep?

A. He said that Shaw had mortgaged a lot of stuff to different eastern people and had skipped the country.

Q. Did Gowan or Cowden at any time tell you when the bill of sale testified to by you was executed?

A. No, sir, they didn't give me the date, it was about the 20th of June, 1902.

Q. How do you fix the 20th of June as the date to which they referred?

(Deposition of John R. Bonson.)

A. That was about the date that Cowden told me that he had just gotten a bill of sale of these sheep.

Q. Those were the words that he used, "just gotten a bill of sale of those sheep," were they?

A. Yes, sir.

Q. And he made that statement to you that he had just gotten a bill of sale of those sheep on that day?

A. Yes, sir, about the 20th or 21st of June.

Q. How first spoke to you about the bill of sale having been given, Gowan or Cowden?

A. Gowan.

Q. What did he say to you in the same connection when he spoke to you?

A. He said he had sold the sheep to Cowden.

Q. Give you any reason why?

A. Yes, he claimed Shaw was owing him six to eight thousand dollars and thought he ought to protect himself if he could and asked me if I blamed him for protecting himself in that way.

Q. That was about how long after he had first offered the sheep for sale to you as the Shaw sheep?

A. About ten days.

Q. That would place it about what date in June?

A. About the 20th or a day or two prior to that time.

Q. Had Gowan at any time prior or did he at any time after claim to have title to the so-called Shaw sheep?

A. He never claimed to have any title to them.

Q. Did he claim to have any interest in them whatever

(Deposition of John R. Bonson.)

other than that Shaw was owing him six or eight thousand dollars?

A. He never told me that he had any interest in these particular sheep still he referred to them as the Shaw wethers and the Shaw and Gowan sheep but he never claimed as being the owner or part owner of these sheep.

Q. You are positive that at no time prior to the 20th or at most the 18th or 19th of June, 1902, that no mention was ever made to you by either J. B. Gowan or Ralph Cowden of the fact that a bill of sale of these sheep had had been made by Gowan to Cowden?

A. No, sir, no mention had ever been made to me prior to that time.

Q. And from the time that you arrived at Caldwell on the 7th or 8th of June up to the time when you say he spoke to you about the bill of sale and asked you if you blamed him for doing what he had done as testified to by you on a day somewhere from the 18th to the 20th of June, 1902, you had talked with him how frequently?

A. Most every day.

Q. And during almost every day talked to him with reference to buying them?

A. Yes, sir.

Q. And did he ever at any time during this period say to you that he had a right to sell these sheep or had any title to them or any portion of them?

A. No, sir.

Q. How did he say he owned them, I mean prior to the

(Deposition of John R. Bonson.)

date when he told you he had given a bill of sale as mentioned by you?

A. He told me on Shaw's return he would be in a position to price the sheep to me and offer them for sale.

Q. On the date mentioned by you as when you was told by Gowan that a bill of sale had been given by him to Cowden for these sheep did he say anything to you about Shaw returning?

A. He told me that Shaw hadn't returned and that he didn't think he ever would.

Q. Had he ever indicated such a thought to you prior to that day? I mean that he wouldn't return?

A. No, sir.

Q. Had he or had he not up to the date mentioned sometime from the 18th to the 20th of June, 1902, constantly told you that he was expecting Shaw back from Portland, Oregon, any day and that he would be in a position to price the sheep to you when he came back?

A. Yes, sir, he always spoke of Shaw returning up to the date about the 18th of June, I mean the date when he told me that he had sold the sheep to Cowden and asked me if I blamed him for it.

Q. Did Gowan ever tell you anything about on what basis he took care of the Shaw sheep?

A. He at one time told me that he got a thousand dollars a year for running Shaw's sheep business.

Q. Did Gowan ever tell you about having been interested in any sheep there?

(Testimony of John R. Bonson.)

A. He told me about having an interest with Cowden in some ewes and lambs.

Q. When did he tell you that?

A. I took from his letter that I seen prior to June 7th, and he also told me on several different occasions between June 7th and June 18th or 20th.

Q. Tell you anything about on what basis he was taking care of these sheep?

A. No, sir.

Q. Didn't say anything about whether he was getting a salary of a thousand dollars a year or any other amount for taking care of these sheep?

A. No, sir.

Q. What is your age?

A. 31.

Q. What business have you been engaged in for the last 13 or 14 years principally?

A. Farming, cattle feeding, buying and selling stock and cattle, hogs and sheep feeding.

Q. With whom have you been engaged in business during most of the time?

A. With my father most of the time, whose name is Nick Bonson and who resides at Grand Island, Nebraska.

Q. For how many years have you been engaged to any extent in the business of buying and selling sheep?

A. For the last ten years.

Q. Are you familiar with the market price of sheep during that period?

(Deposition of John R. Bonson.)

A. Yes, sir.

Q. In the business of buying and selling sheep during the period mentioned how did you determine the prices at which you would sell or sold?

A. I always based the values by what they would bring at the livestock centers or sheep brought in the west should be bought at prices sufficiently low that by adding freight and other shipping expenses that they would sell on the market without a loss and whatever they net gives you the value on the range or at the western section.

Q. In selling sheep what determines you in fixing the prices at which sold where they are not sold in the principal markets?

A. All values at all times are based on what sheep will bring at the principal livestock centers as Chicago, Omaha and St. Joe and Kansas City.

Q. Do you know of sheep having a market value except as related as determined and fixed by their selling price at these markets?

A. No, sir.

Q. Do you know or have you known of sheep having a market value in Idaho or elsewhere in the last 15 years except by reference to the selling prices at these principal livestock centers at which they are sold?

A. No, sir, all sheep values are determined by what they will bring at the principal markets especially wethers, whose values are what they would bring at the principal markets and the values they would bring at the principal

(Deposition of O. W. Eaton.)

markets are as staple as corn, wheat, oats, cattle and hogs.

Q. Do you expect to be in the vicinity of Boise, Idaho, in the near future?

A. No, sir.

Q. About how far is it from here to Boise, Idaho?

A. About thirteen or fourteen hundred miles.

Witness excused.

JOHN R. BONSON.

O. W. EATON, the witness who was temporarily withdrawn by counsel for defendants, was again called and testified as follows, to wit:

(Examination by Mr. B. F. NEAL.)

Q. Where did you make your headquarters, where did you room while stopping at Caldwell, Idaho, when stopping there in the summer of 1902?

A. We stopped first at the depot hotel for two or three days and after that I lodged at Gowan's, his wife was away from home, I understood at Grand Island on a visit, we just simply slept there nights for three or four nights.

Q. You mean that after you moved there from the hotel that you just stayed there three or four nights or all the balance of the time?

A. All the balance of the time is my recollection.

Q. On or about what time did you arrive at Caldwell?

A. About the 8th.

Q. And about what date did you leave?

A. Somewhere about the 15 or 17 of June.

Q. During the time that you were stopping at Gowan's

(Deposition of O. W. Eaton.)

or at the hotel mentioned and at the time mentioned did you have any conversation with Gowan with reference to the purchase of sheep?

A. Why, I didn't have but a very little conversation, he spoke of he and Cowden running ewes and lambs together.

Q. Did he at any time state to you that he had any wethers or any interest in any wethers in the State of Idaho?

A. No, sir, never did, nothing but ewes and lambs, no wethers at all.

Q. Did you ever tell him why you were there, what your mission or business in that locality was?

A. Yes, sir, I told him we were there for the purpose of purchasing wethers to put on the market.

Q. Did he talk to you about selling you any wethers?

A. Yes, sir, he did.

Q. What wethers did he tell you about?

A. He said he had for sale, he didn't say they were his but he said he had for sale between five and six thousand wethers, this Gowan, yearlings and two year old wethers.

Q. Did you have any further conversation with him prior to the time you say you left there on or about the 15th or 17th of June, 1902, in which he told you whose sheep they were?

A. Yes, sir, I had a conversation with him later after returning from Weiser and Huntington.

Q. When did you arrive at Caldwell, Idaho?

A. On the 7th or 8th of June, 1902.

(Deposition of O. W. Eaton.)

Q. And how long did you stay there?

A. I staid there three or four days, that is until about the 11th or 12th and then went to Weiser and Huntington, being gone over night.

Q. And then where did you go?

A. Back to Caldwell, returning on the 13th or 14th, I then remained at Caldwell stopping at Gowan's until some time from the 15th to the 17th of June, 1902, when I returned home leaving John R. Bonson there.

Q. At about what date was this that you had this that you had this last conversation with Gowan that you have just testified to?

A. Sometime between the 11th and 17th, it must have been about the 14th of June, 1902.

Q. What further did he tell you with reference to the wethers near Hailey with reference to which he had spoke to you before?

A. He told me that Shaw hadn't returned and that he didn't care to sell them until Shaw returned, he didn't speak of having any interest in them at that time.

Q. Did he ever speak to you or in your presence of ever owning the title to those sheep?

A. No, sir.

Q. Who did he speak of as owning these sheep?

A. R. L. Shaw.

Q. Amout how many head of these sheep did he say there were?

A. He said there were two bands, he thought about

(Deposition of O. W. Eaton.)

2,900 in a band, he spoke as there being between 57 and 5,900.

Q. What age and description of sheep did he say they were?

A. He said they were on what we call a merino order and that some of them were rather pelty.

Q. Did he price them to you?

A. No, sir, he didn't want to price them until Shaw returned, I left that to Bonson.

Q. Did he tell you anything about Shaw's financial condition?

A. He spoke about him as being heavily in debt but didn't speak about any mortgage.

Q. Did you have any other or further conversation with Gowan, J. B. Gowan, with reference to these bands of sheep?

A. No, sir, that was all.

Q. Did you make any offer to buy them at that time?

A. No, sir, well I couldn't very well he didn't want to sell them until Shaw returned.

Q. Did he give any reason why he wouldn't sell them until Shaw's return?

A. He represented that Shaw owned the sheep and that he wouldn't sell them until he returned.

Q. About what time did you have your last conversation with him when he made such representations to you?

A. It was about the 14th or 15th of June, 1902.

(Deposition of O. W. Eaton.)

Q. Did he ever make any different representations to you at a later day?

A. No, sir.

Q. Or prior to that time?

A. No, sir.

Q. Up to the time that you left Caldwell for return to Nebraska, between the 15th and 17th as testified to by you, had Shaw returned to Caldwell or that vicinity to your knowledge?

A. No, sir.

Q. Had Gowan at any time made any figures to you or any basis on which he would sell these sheep?

A. No, sir, he never made any offer at all.

Q. Do you know how much longer John R. Bonson staid there after you left?

A. No, sir, I don't positively, he went to look at these sheep, I talked with him when he come back, it was the very last of June or the first part of July that he returned, that's my recollection.

Q. Did Bonson remain longer on account of some arrangements you had with him because of your trip west?

A. Yes, sir, we had some hopes that we would get these sheep.

Q. You didn't see the sheep yourself?

A. No, sir.

Q. Did Gowan describe the marks and brands on these sheep to you?

(Deposition of O. W. Eaton.)

A. No, sir, I didn't ask him and he didn't describe them?

Q. Did you hear Gowan say anything to Bonson about staying longer after you left?

A. Yes, sir, I heard him invite him to stay and go and look at these sheep.

Q. Did you understand why he wanted him to stay longer, stay to a later date?

A. I understood he wanted him to stay and look at these sheep, I think he wanted him to wait a few days for Shaw to return, he was expecting Shaw every day and he gave me to understand that he couldn't sell the sheep until Shaw's return.

Q. Did you ever have any conversation with Gowan with reference upon what basis he was caring for the so-called Shaw wethers over near Hailey, I mean whether or not he was receiving or was to receive any pay for his services?

A. Yes, sir, I understood him that he was at work on a salary, he didn't tell me the amount and I didn't ask him but he gave me to understand that he was taking care of them on a salary.

Q. By giving you to understand you mean do you that he was working for a salary in caring for the Shaw sheep?

A. Yes, sir.

Q. Did he tell you what if any compensation he was receiving for caring for the so-called Cowden and Gowan ewes and lambs?

(Deposition of O. W. Eaton.)

A. I understood he was in partnership on the ewes and lambs.

Q. Did he say anything about being paid for his services in caring for them?

A. Not for the Cowden ewes and lambs.

Q. Did he at any other time by direction, words or otherwise indicate that he claimed any title as a partner or otherwise in any of the so-called Shaw wethers?

A. No, sir, only simply working on a salary, no claim of title whatever.

Q. Where did he tell you the Shaw wethers were located at that time?

A. Over near Hailey in what they called the Wood River Country.

Q. Where did he tell you that the Gowan and Codwen ewes and lambs were located?

A. Up near a place or town they called Council.

It being six o'clock P. M., the further taking of the deposition is adjourned until the hour of nine o'clock A. M., on Friday, April 28, 1904, at the same place as hereinbefore described.

B. F. Neal, attorney for defendants, and the witness O. W. Eaton being present, and it being of the hour of nine o'clock A. M. of April 28, 1904 (Friday), the further taking of the deposition is continued as per adjournment, at the office of Abbott & Abbott, before O. A. Abbott, the notary public.

(Deposition of O. W. Eaton.)

(Examination by Mr. B. F. NEAL.)

Q. Did Gowan ever tell you or by any words or acts give you to understand that any person other than R. L. Shaw owned or claimed to own any of the two bands of wethers located in the Wood River country near Hailey?

A. No, sir, never did.

Q. Did he say at any time to you or in your presence that Ralph Cowden owned part of them?

A. No, sir, never mentioned his name.

Q. Did he say at any time that he himself owned part of the or had an interest in part of them?

A. No, sir.

Q. You met Ralph Cowden occasionally while there?

A. I was in his office once or twice.

Q. What business was he engaged in at that time?

A. Lumber business.

Q. Talk to him about sheep?

A. Yes, sir, he spoke about running these ewes and lambs with Gowan.

Q. Where did he say they were located?

A. I think he said they were located—if I get the direction right—north, near Council up in that country.

Q. Did he speak about having any other sheep up in Idaho other than the ewes and lambs?

A. No, sir, I didn't hear him mention any others.

Q. Did he speak to you at any time about Gowan having any sheep or any interest in any sheep except those that he owned with Cowden?

(Deposition of O. W. Eaton.)

A. No, sir.

Q. When did you have your last conversation with Ralph Cowden?

A. I think about the 14th, right about that time, I couldn't give the date, June 14th, 1902, I think.

Q. Did you have any conversation with him with reference to R. L. Shaw after that?

A. No, sir, but very little he spoke as though they expected Shaw back soon.

Q. Did you have any conversation with him with reference to Shaw's sheep being mortgaged?

A. No, sir, none at all.

Q. How old are you?

A. 68.

Q. For how many years have you been engaged in the sheep business?

A. About 30 years.

Q. What has been the nature of the sheep business that you have done during that period?

A. During that time I ran sheep in Kansas on the range with a partner, Mr. Gifford, a brother-in-law of mine, for six or eight years, and since that time my business has been confined to feeding sheep during the winter fattening them for market.

Q. How have you usually disposed of your sheep?

A. Fattened them and sold them in Omaha and Chicago.

(Deposition of O. W. Eaton.)

Q. Have you been engaged to any extent in the business of buying and selling sheep?

A. Yes, sir, to considerable extent.

Q. Give it as near as you can, for the last 15 years, describe what you have been doing?

A. Going into the western States, Idaho, New Mexico, Utah and Oregon and driving sheep through, I never drove through but once, I was connected with 14,000 and drove clear through from Oregon, bought them in Oregon and sold part of them here to feeders and fed part of them myself.

Q. What experience other than that have you had?

A. I have bought and sold to feeders considerable.

Q. About how many have you handled personally every year?

A. From six to ten thousand.

Q. Through the period mentioned by you?

A. Perhaps not every year but it would run along about that number.

Q. Upon what do you base the price or did you base the price and would have paid for sheep when buying the the prices you would have asked for and received usually when you have sold sheep?

A. On the markets in the livestock centers, principally Omaha, Chicago and St. Joe.

Q. Is there to your knowledge or has there ever been during the time during which you have handled sheep a market value for sheep except the relative market value

(Deposition of O. W. Eaton.)

with reference to the prices at which sheep are bought and sold in the general livestock sales points as at Chicago, Omaha and St. Joe?

A. Yes, sir, those are the markets we buy on, the prices we pay for sheep wherever we buy them is governed by the price at which they can be sold for on the principal markets by adding to the cost price the price of transportation from the place of purchase to the place of selling, we determine the price which we will pay.

Q. So far as you know and based upon your experience as a dealer and your general knowledge do you know of any market value in the State of Idaho or any other state for sheep except as based upon the current prices at the time in the markets of the United States as for instance Omaha, Chicago and St. Joe?

A. No, sir, I don't.

Q. Do you know of any way of arriving at the market price except by taking as a basis the current market price in these sales markets?

A. No, sir, I don't. I wouldn't attempt to buy sheep on any other basis except by taking into consideration the current prices in Chicago, Omaha and St. Joe markets.

Q. How do those current prices generally compare with each other on a given day?

A. About all the same at the different points, some may be farther away, we think we can do a little better by going to Chicago but it's about a stand off.

Q. With your experience as a sheep dealer have you

(Deposition of O. W. Eaton.)

ever bought sheep upon any other basis than upon the market price that is determined by the market price upon which sheep were selling at the principal markets?

A. No, sir.

Q. In your judgment is there any other market price than that founded upon that basis?

A. I don't know of any other way to buy sheep safely.

Q. Where is Wood River, Nebraska?

A. 16 miles west of here.

Q. And about how far from Boise, Idaho?

A. It must be 1400 miles.

Q. Have you any intention of being or will you probably be in the vicinity of Boise, Idaho, in the near future?

A. I don't think I will.

Witness excused.

O. W. EATON.

State of Nebraska,
County of Hall.

I, O. A. Abbott, a notary public duly commissioned and qualified for and residing in the county and State aforesaid, do hereby certify that O. W. Eaton and John R. Bonson were by me severally duly sworn to testify the truth, the whole truth and nothing but the truth and that the depositions by them respectively subscribed and each sheet whereof has been further verified by their respective signatures upon the margin thereof was reduced to writing on a typewriting machine by O. A. Abbott, Jr., who is not related to or counsel for either party or other-

wise interested in the result of this suit, and in the presence of each witness respectively and were by said witnesses subscribed and verified in my presence and were taken at the time and in the place in the annexed notice and agreement specified, and I further certify that I am not counsel, attorney or relative of either party or otherwise interested in the event of this suit and that the taking of said deposition was commenced at the time in said notice specified and were continued by adjournments from day to day as set forth in the body of said depositions that is to say from the 26th day of April A. D. 1905, to the 28th day of April, A. D. 1905, both of said days included.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 28th day of April, A. D. 1905.

[Seal]

O. A. ABBOTT,
Notary Public.

My commission expires Nov. 20, 1909.

FEES.

O. W. Eaton, witness:

Mileage, 16 miles.....\$1.60
Witness' fees, two days..... 6.00

John R. Bonson, witness:

Mileage, 50 miles.....\$5.00
Witness' fees, two days..... 4.00

Swearing witnesses, two at \$.10..... .20
Certificate and seal..... .25
Transcribing depositions on typewriter.....26.60

County clerk's certificate.....	
Postage and registry.....	.22

Total.....	\$43.87

State of Nebraska,
Hall County,—ss.

I, J. L. Schaupp, County Clerk of the County aforesaid, do hereby certify that O. A. Abbott, an acting notary public within and for said County, duly qualified to act as such, that all of his official acts are entitled to full faith and credit when executed within the period named, to wit: Commencing Dec. 12th, 1903, and ending Nov. 20th, 1909, the last named date being the date of the expiration of his Commission.

In testimony whereof, I have hereunto subscribed my name and affixed the official seal of said county, at my office, this 28th day of April, 1905.

[Seal]

J. L. SCHAUPP,
County Clerk.

[Title and Caption Omitted.]

Notice to Take Depositions of O.W. Eaton and John R. Bonson.

To J. C. Mills, Jr., Plaintiff, and W. E. Borah, His Attorney:

The above-named plaintiff will take notice that on the 26th of April, 1905, the said defendants and each of them will take the depositions of O. W. Eaton and John R. Bon-

son, witnesses to be used as evidence on the trial of the above-entitled cause at the law offices of Abbott & Abbott in the city of Grand Island in the county of Hall, State of Nebraska, between the hours of 9:30 A. M. and 6:00 P. M. of said day, and the taking of said depositions will be adjourned from day to day (not including Sundays and legal holidays) between the same hours until they are completed.

MORRISON & PENCE, and
NEAL & KINYON,
Attorneys for all Defendants.

Received copy of the above notice this 15th day of April, 1905, and consent is hereby given that said depositions may be taken at the time and place in said notice specified, subject to all objections as to competency, relevancy and materiality.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Depositions of O. W. Eaton and Jno. R. Bonson. Filed May 3, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Notice to Take Deposition of George W. Hawkes.

To J. C. Mills, Jr., and W. E. Borah, his Attorney:

The above-named plaintiff will take notice that on Thursday, the 18th day of May, 1905, the defendants and each of them will take the deposition of George W. Hawkes, a witness to be used as evidence on the trial of

the above-entitled cause at the law offices of James Pardee, at the Eagle Block in the city of Salt Lake, county of Salt Lake, and State of Utah, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said deposition will be adjourned from day to day (Sundays and legal holidays excepted) between the same hours until they are completed, subject to all objections, for competency, relevancy and materiality.

MORRISON & PENCE, and
NEAL & KINYON,
Attorneys for all Defendants.

Received copy of the above notice this 10th day of May, 1905, and consent is given that said deposition may be taken at the time and place in said notice specified.

W. E. BORAH,
Attorney for Plaintiff.

Deposition of Geo. W. Hawkes.

Deposition of sundry witness taken before me, Leonora Trent, a notary public within and for the County of Salt Lake, State of Utah, on the 27th day of May, A. D. 1905, between the hours of 9 A. M. and 5 P. M. at Room No. 6 in the Eagle Block, Salt Lake City, Salt Lake County, Utah, pursuant to the annexed Notice, to be read in evidence in behalf of the defendants in an action pending in the Circuit Court of the United States in and for the District of Idaho, Central Division, Ninth

(Deposition of George W. Hawkes.)

Circuit, County of Ada, in which J. C. Mills, Jr., late sheriff of Boise County, Idaho, is plaintiff, and American Bonding Company of Baltimore and the Flato Commission Company are defendants:

GEORGE A. HAWKES, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposes and saith, as follows:

JAMES D. PARDEE, Esqr., Attorney, appearing for the defendants, questioned the witness as follows:

Q. What is your name?

A. George A. Hawkes.

Q. Where do you reside?

A. Salt Lake City, Utah.

Q. What is your business, your occupation?

A. Travelling Freight and Livestock Agent for the Rio Grande Railroad Company.

Q. How long have you been such agent for the Rio Grande Railroad Company?

A. You mean since I left the Flato Commission Company? I believe it was the first day of July, 1901, that I went to work for them.

Q. Were you ever employed by the said Railroad Company before that time?

A. Yes, sir.

Q. When did you commence to work for them the first time, if you remember.

A. I commenced to work for them in the Express Department in 1890 about the last of the year, and as Trav-

(Deposition of George W. Hawkes.)

eling Freight and Livestock Agent some time in July, 1895, continued to work for them until I resigned to take a position with the Flato Commission Company either in February, 1901, or 1902, as near as I can remember.

Q. What were your duties as Traveling Freight Agent or Traveling Livestock Agent for the Rio Grande Railroad Company?

A. Soliciting shipments of both dead freight and livestock for that company.

Q. While working for that said company as Livestock Agent did you gain any information as to the weight of livestock and their prices?

A. I think so.

Q. State what experience you had in getting information as to weights and prices of livestock?

A. No particular experience other than from parties making shipments of livestock east I have seen a number of shipments weighed before being loaded for the market, and also seeing accounts of sales after the parties returned, which gave me a pretty good idea of certain classes of sheep on the range.

Q. State how good your judgment got to be in judging the weight of sheep, or livestock, gained through your experience with handling sheep?

A. At the time I thought my judgment very fair.

Q. When did you commence working for the Flato Commisison Company?

A. In February, 1901, or 1902.

(Deposition of George W. Hawkes.)

Q. What were your duties in connection with the Flato Commission Company?

A. Soliciting shipments for their commission house and looking after their business in general in Utah, Wyoming, Idaho, and Nevada.

Q. How long did you work for the Flato Commission Company?

A. About two and one-half years as nearly as I can remember.

Q. During the summer of 1902, what was your knowledge as to the prices of sheep and livestock, if you had any?

A. Only from the market reports given by the different Stock Yards Papers at Missouri River points and Chicago, which reports I received nearly every day when I was at railroad points where I could receive my mail.

Q. What papers do you remember of reading?

A. The "Daily Drovers' Journal" and "Stockman," published at Omaha, a paper called The Telegram, published in Kansas City, also a livestock paper published in Chicago—at the present time I don't remember its name—also a livestock paper published in Denver, besides some market reports sent out by nearly all Commission Houses to livestock growers throughout the country, quoting markets during the shipping season, and also livestock markets published in a great many of our western papers, such as "The Salt Lake Tribune," and "The Salt Lake Herald."

(Deposition of George W. Hawkes.)

Q. During the summer of 1902, were you familiar with the local livestock market in Idaho?

A. Yes, sir.

Q. During the summer of 1902, what was the difference between the local market values of Hailey, Idaho, and the Eastern Markets?

A. I think the difference between the two markets was the cost and expense of transportation between those points plus the shrinkage on the stock.

Q. Were the markets of Idaho, and particularly near Hailey, Idaho, during the summer of 1902, practically controlled by the eastern market prices?

A. I think they were.

Q. Did you have anything to do with the band of sheep that was sold under the chattel mortgage of the Flato Commission Company by Sheriff J. C. Mills, Jr?

A. I sold some sheep that I was told was bid in by a representative of the Flato Commission Company named A. H. Bree, that were sold to him by Sheriff Mills near Council, Idaho.

Q. Those sheep that you found in the possession of A. H. Bree, state what you did with them?

A. I sold the young ewes, that is, I sold the tops or the pick of the band, or bands, to a man by the name of Baugh who lived at Shoshone, Idaho. I think there was in the neighborhood of 2,500 head of those sheep, the balance, as I remember it, was sold to a man by the name of J. B. Hunter, consisting of old ewes and lambs.

(Deposition of George W. Hawkes.)

Q. State what was the price that you received from Mr. Baugh for the sheep that were sold to him?

A. As near as I can recollect it was \$2.85 per head.

Q. What price did you receive for the sheep or ewes that were sold to Hunter?

A. As near as I can recollect it was \$2.00 per head for the ewes and \$1.36 for the lambs.

Q. Did you make any effort to sell these sheep for any higher price than above stated?

A. Yes, sir.

Q. State what you did?

A. I tried several different times to get parties to go and look at these sheep at a higher price but was unable to get any one to do so.

Q. How did these prices that you got for the sheep that you sold to Hunter and Baugh compare with the "River" prices for similar sheep at that time?

A. I think very favorably.

Q. What would constitute the difference between "River" prices and Council, Idaho?

A. I figure, the cost of transportation and shrinkage between those two points.

Q. Do you remember now what your judgment was at the time as to what the lambs weighed that were sold to Hunter?

A. As near as I can remember, my estimate at the time was about fifty pounds on the "River" market, which

would make about eight or ten pounds more on the range.

GEORGE A. HAWKES.

Witness.

I, Leonora Trent, notary public in and for the County of Salt Lake, State of Utah, do hereby certify that George A. Hawkes, was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by myself (not being interested in the suit), in the presence of the witness and was subscribed by said witness in my presence, and was taken at the time and place in the annexed notice specified. That I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; and that said deposition was commenced at the time specified in said notice and continued without adjournment on said day.

In witness whereof I have hereunto set my hand and seal this twenty-seventh day of May, A. D. 1905.

[Seal] LEONORA TRENT,
Notary Public in and for Salt Lake County, State of Utah.

My commission expires November 22, 1905.

Fees for taking depositions, \$6.10 in both cases.

[Endorsed]: No. 249. Deposition of Geo. W. Hawkes.
Filed June 2d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

J. C. MILLS, Sheriff,

Plaintiff,

vs.

FLATO COMMISSION COMPANY, and
THE AMERICAN BONDING COM-
PANY OF BALTIMORE,

Defendants.

Objections to the Deposition of Ed. H. Reid.

Comes now the plaintiff and objects to all and the entire answer of Ed. H. Reed in his deposition in answer to the following question: "What was the reason that the bond in question was given?" and for grounds of said objection says:

1. That said answer and testimony is incompetent, irrelevant and immaterial.

2. That it does not show or tend to show that the bond in question was improperly demanded or that the same was illegal or void or obtained by extortion or under color of office.

3. For the reason that the said sheriff had a right to demand of the Flato Commission Company a bond before proceeding to foreclose the chattel mortgage in question.

4. For the reason that the said statements of the witness are contrary to the recitals in the bond, and that the defendants are estopped to contradict the recitals in said bond.

The plaintiff objects especially to that portion of the statement of the witness in answer to the question "What

was the reason that the bond in question was given," beginning with the sentence "When I returned I was informed by Mr. J. H. Hawley and also by Mr. Hawkes," etc., and ending with the words, inclusive, "Because of the fact that Sheriff Mills refused to do any act or thing whatever in and about the making of said levy until so indemnified," for the reason—

1. That the same was incompetent, irrelevant and immaterial.

2. That it is hearsay and a conclusion of the witness and does not prove or tend to prove any material issue in this case.

The plaintiff objects especially to that portion of the deposition in answer to the question "What is the reason that the bond in question was given," beginning with the commencement of the answer of the witness thereto and ending with the words, "Growing out of the conversation between Mr. Hawley and Mr. Hawkes and myself on the one part and Sheriff Finney on the other, the amount of the bond was at the time fixed at \$10,000," for the reason—

1. That all of said matter relates alone to the matter of the giving of the bond to the sheriff of Blaine County, William Finney, and not to the sheriff in this case, J. C. Mills, and is hearsay as to this case, incompetent, irrelevant and immaterial.

2. That it does not prove or tend to prove any issue in this case.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Objections to the Deposition of Ed. H. Reed. Filed June 2d, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Objections to the Deposition of James C. Dahlman.

Comes now the plaintiff and makes the following objections to the testimony of James C. Dahlman in said Dahlman's deposition, to wit:

1. Plaintiff objects to all of the testimony or evidence of said James C. Dahlman for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the matter of the value of the sheep in question has been fixed and determined by the judgment in the case of Ralph Cowden vs. J. C. Mills, Jr., in the District Court of the Third Judicial District of the State of Idaho in and for Canyon County, and that the judgment in said case is conclusive and binding upon the defendants in this case.

2. Objects to the answer to the following question upon page 3 of said deposition, "What would be the value of wethers one and two years old in the State of Idaho, having reference to the price at which they would sell upon the market as at Omaha, St. Joe or Kansas City, for the season that the same is irrelevant, incompetent and immaterial, and for the further reason that the judgment in the case of Mills vs. Codwen in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County is conclusive upon these defendants and

has established the value of said sheep and the amount which the plaintiff in this case is entitled to recover.

3. Objects to all the testimony thereafter given by said witness as to the price or value of the sheep covered by the suit in the case of Mills vs. Cowden in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County for the reason that in this case it is incompetent, irrelevant and immaterial, that the judgment in said case of Mills vs. Cowden is conclusive and binding upon these defendants and has established the value of said sheep and the amount which the plaintiff is entitled to recover in this case.

4. Objects to the testimony of said witness showing the amount realized from the sale of the sheep in question for the reason that the same is incompetent, irrelevant and immaterial and is not binding upon this plaintiff and does not constitute a measure of damages in this case and is not the proper method of establishing the liability of these defendants.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Objections to Deposition of James C. Dahlman. Filed June 2d, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

**Objections to the Depositions of O. W. Eaton
and John R. Bonson.**

Comes now the plaintiff and makes the following objections to the testimony of O. W. Eaton and John R. Bon-

son, in the depositions of said Eaton and Bonson, to wit:

1. Plaintiff objects to the testimony of O. W. Eaton as given in his deposition for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that all matters and things covered by said testimony were and are determined by the judgment in the case of Ralph Cowden vs. J. C. Mills, Jr., in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and for the further reason that said judgment is conclusive and binding upon the defendants in this case.

2. Plaintiff objects to the testimony of John R. Bonson as given in his deposition for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that all matters and things covered by said testimony were and are determined by the judgment in the case of Ralph Cowden vs. J. C. Mills, Jr., in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and for the further reason that said judgment is conclusive and binding upon the defendants in this case.

3. Objects to the answer of the following question, "Did you have any correspondence with Gowan during the year 1902, or did you see any correspondence from him with reference to having any sheep to sell," for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the ownership of said sheep has been litigated and determined by the judgment in the case of Cowden vs. Mills above referred to.

4. Objects to the answer of the following question, "What sort of sheep did he say in his letter he had to sell," for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the ownership of said sheep has been litigated and determined by the judgment in the case of Cowden vs. Mills above referred to.

5. Objects to all the testimony of said John R. Bonson wherein he attempts to relate the conversation with J. B. Gowan upon pages 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, of said deposition, for the reason that the same is incompetent, irrelevant and immaterial and in concerning and touching a matter that was litigated and determined in the case of Cowden vs. Mills above referred to, and for the further reason that the judgment in the case of Cowden vs. Mills is conclusive in all matters concerning which said testimony is given, and is conclusive as to the amount which the plaintiff in this case may recover and as to who the owner of the sheep in question was.

7. Plaintiff objects to the testimony of O. W. Eaton relative to the conversation with Gowan or Cowden related in his testimony on pages 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, for the reason that the same is incompetent, irrelevant and immaterial and is concerning and touching a matter that was litigated and determined in the case of Cowden vs. Mills above referred to, and for the further reason that the judgment in the case of Cowden vs. Mills is conclusive in all matters concerning which said testimony is given and is conclusive as to the amount which

the plaintiff in this case may recover, and as to who the owner of the sheep in question was.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Objections to the Testimony in the Depositions of O. W. Eaton, and John R. Bonson. Filed June 2d, 1905. A. L. Richardson, Clerk.

[Title and Caption Omitted.]

Objections to the Deposition of George A. Hawkes.

Comes now the plaintiff and objects to the deposition of George A. Hawkes and all of the testimony of said Hawkes in said deposition, for the reason that the same is incompetent, irrelevant and immaterial and does not prove or tend to prove any of the issues in this case, and for the further reason that the matters to which said testimony in said deposition relates was involved in the case of Cowden vs. the above named plaintiff in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and that the judgment in said case is conclusive upon said matter and binding upon these defendants, and they cannot relitigate or retry said matters.

Plaintiff especially objects to that portion of the testimony of said George A. Hawkes wherein it is attempted to show the value of the sheep in question for the reason that the same question was involved in the case of Cowden vs. Mills aforesaid and the evidence was incompetent, ir-

relevant and immaterial, said judgment in said case being conclusive and binding upon these defendants.

Plaintiff objects to that portion of the testimony of George A. Hawkes upon page 4 of the deposition and contained in his second answer upon said page, for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

Plaintiff objects to the testimony of said Hawkes in his third and last answer upon page four and continued to page five, for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

Plaintiff further objects to the last three answers of said Hawkes, for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 249. Objections to the Deposition of George A. Hawkes. Filed June 2d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Central
Division, District of Idaho.*

J. C. MILLS, JR.,

Plaintiff,

vs.

THE AMERICAN BONDING COM-
PANY OF BALTIMORE, et al.,

Defendants.

Testimony.

Appearances:

For the Plaintiff, W. E. Borah and F. J. Smith.

For the Defendant, B. F. Neal and John T. Morrison.

Boise, Idaho, June 3, 1905.

By Mr. MORRISON.—It is stipulated and agreed by and between the parties hereto that either party may have 60 days from and after notice of filing of the judgment of the Court in which to prepare and serve and file statement of facts and bill of exceptions or any of said papers and instruments on motion for a new trial herein.

It is further stipulated and agreed that either party, as the case may be, may have ten days after the filing of all or any of said papers in which to prepare and serve amendments and counter statements thereto.

It is further stipulated and agreed that all objections made by the defendants, or either of them, shall at the option of the defendants, apply to either or both.

B. E. HYATT, duly called, sworn and examined, testified as follows:

(Testimony of B. E. Hyatt.)

Direct Examination.

(By Mr. BORAH.)

By Mr. MORRISON.—At this point we would like to have the record show that the defendants and each of them object to the introduction of any evidence for the reason that the complainant fails to state facts sufficient to constitute a cause of action against the defendants or either of them.

By the COURT.—There has been a demurrer in this case which was overruled in the State court raising these questions, has there not?

By Mr. MORRISON.—Yes.

By the COURT.—Then I do not wish to pass upon these questions again. The motion, of course, will be overruled.

By Mr. MORRISON.—Exception.

By the COURT.—You desire that to apply to all of the witnesses?

By Mr. MORRISON.—Yes, sir.

Q. What official position do you hold in this State?

A. Chief Clerk in the Secretary of State's office.

Q. The Secretary of State is absent from the city?

A. Yes, sir.

Q. As such assistant have you charge of the records and archives of the Secretary of State's office?

A. I have.

Q. Have you in your possession the Articles of Incorporation of the defendant company, the American Bonding Company?

(Testimony of B. E. Hyatt.)

A. Yes, sir.

By Mr. BORAH.—Now, I wish to introduce in evidence the Articles of Incorporation of the defendant company as filed with the Secretary of State, with leave to make a certified copy for the purpose of showing the change of name of the company.

By Mr. NEAL.—We do not care to make any objection as to the competency of the offer. We simply say it is irrelevant and immaterial.

Q. You may state if the paper which you have just handed me is that paper which you have just referred to, the Articles of Incorporation of that Company?

A. Yes, sir.

By Mr. BORAH.—We now offer this in evidence, asking leave at the same time to withdraw the original and substitute a certified copy. We will ask to have this recognized as Exhibit "A." What I desire to show is the time at which the articles were filed and the change of the name of the company from its original name under which they signed this bond to the present name under which they brought suit. We desire to show at this time, by the record of the Secretary of State's office that the defendant Bonding Company duly filed its Articles of Incorporation as required by the Statutes of the State of Idaho and the Constitution and designated its agent; said filing being made on the 11th day of April, 1903, and that the said Articles of Incorporation as filed, disclose that the change of name of the Company from the original name under

(Testimony of B. E. Hyatt.)

which the Articles were filed to its present name was made by authority of the legislature of the State of Maryland.

By Mr. NEAL.—That is admitted.

By Mr. BORAH.—I will say The American Bonding and Trust Company is identical with the American Bonding Company. We offer now a certified copy of the filing of the designation of the agent and the change of the name of the agent; that is a certified copy.

(Same is admitted in evidence and marked Plaintiff's exhibit "B.")

By Mr. NEAL.—We object to that as immaterial and irrelevant.

By the COURT.—The objection is overruled.

By Mr. NEAL.—We will take an exception.

Q. Now, Mr. Hyatt, the copy which we have introduced discloses that the original agent, as designated by the company, was Charles F. Neal. You may state the date at which that designation was changed and by whom it was changed?

A. On November 25th, 1904, the American Bonding Company filed designation of agent and acceptance of the provisions of the Constitution, designating Harry S. Worthman, Boise, Idaho, as Statutory Agent of the Company.

Q. Prior to that time Charles F. Neal had at all times been agent since they had been doing business in the State?

A. Yes, sir.

(Testimony of John Tucker.)

Cross-examination. (Waived by Defendants.)

Witness excused.

JOHN TUCKER, duly called, sworn and examined, testified as follows:

Direct Examination.

(By Mr. BORAH.)

Q. What is your full name?

A. John A. Tucker.

Q. What official position do you hold?

A. Clerk of the District Court of Canyon County, Idaho.

Q. And as such you have charge of the records and files of the District Court of that county?

A. Yes, sir.

Q. I will ask you to state whether or not you have with you the registry of judgment and the journal showing the entry of judgment?

A. I have.

Q. You may refer to the first entry in the book. What is the book which you have in your hand?

A. Judgment Book Number Two, District Court, Canyon County, Idaho.

Q. Is there in that book an entry of judgment in the case of Cowden versus J. C. Mills?

A. There is.

Q. Turn to that page?

A. Yes, sir, there is.

(Testimony of John Tucker.)

Q. Now, in connection with that book, you may state what the paper is you have in your hand?

A. It is the judgment-roll filed in the case of Ralph Cowden against J. C. Mills, Jr., Sheriff of Boise County, Idaho.

Q. Is that part of the records of your office?

A. It is.

Q. This is the original judgment-roll in that case?

A. Yes, sir.

By Mr. BORAH.—We now offer in evidence the judgment-roll in the case of Ralph Cowden versus J. C. Mills, Jr., Sheriff of Boise County, being the original judgment-roll in that case, taken from the records and filed of the clerk of the Court.

By Mr. NEAL.—To which the defendants and each of them object for the reason that no proper notice, and in fact no notice at all to either of the defendants, has been shown, and that the proposed offer is in an attempt to show a judgment in an action wherein, so far as the record now shows, there has been no notice between the plaintiff and defendants in that action and the plaintiff in this action and the defendants in this action, and is therefore incompetent, irrelevant and immaterial.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

Q. Upon what page of that book does the judgment appear in this case?

A. Page 120.

(Testimony of John Tucker.)

By Mr. NEAL.—We will interpose the same objection as last stated.

By the COURT.—I make the same ruling.

By Mr. NEAL.—Exception.

Q. What is the number of that book?

A. Number Two.

Q. What is the book called?

A. It is called judgment-book, District Court.

By Mr. BORAH.—We offer in evidence the page referred to in volume 2 of the Judgment Book, and ask permission to make a certified copy of the same.

Q. Now, you may state whether or not you have the entry-book with you?

A. I have.

Q. You may refer to that book and to the page where this judgment is entered. What is the page?

A. The pages are not numbered, Mr. Borah.

Q. What is the title of the book and how is it lettered or numbered?

A. Judgment book, District Court, Number One, Canyon County.

Q. Now, is there an entry in that book with reference to this Judgment?

A. I beg your pardon. Did I say “Judgment-Book?”

Q. Yes?

A. I mean, “Judgment Docket.”

Q. Now, is there an entry in that docket with reference to this Judgment?

(Testimony of John Tucker.)

A. There is.

By Mr. BORAH.—We will ask that the clerk read into the record that entry.

By Mr. NEAL.—To which the defendants and each of them object for the reason that the offer which it is proposed to introduce is a Judgment between the plaintiff in this action and one Ralph Cowden, and it is not shown in this action either that there has been notice of any kind given by this plaintiff to either of the defendants in this case, or that there is any privity of any contract or other relation between the defendants in this case or either of them and the plaintiff in the former case, and for those reasons incompetent, irrelevant and immaterial.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

A. (Reading:) “Judgment debtor, J. C. Mills, Jr., Sheriff of Boise County, Idaho. Judgment Creditor, Ralph Cowden. Amount, \$19,195.87. Costs, \$145.15. Time of entry, June 20, 1903. Page of Judgment-Book, book 2, page 120.”

Q. You may state whether or not your records disclose any satisfaction or payment of that Judgment, or any part of it?

A. They do not.

Q. The date of that entry is June 20, 1903?

A. Yes, sir.

Cross-examination (Waived by Defendants.)

Witness excused.

(Testimony of J. C. Mills, Jr.)

J. C. MILLS, JR., duly called, sworn and examined, testified as follows:

Direct Examination.

(By Mr. BORAH.)

Q. Mr. Mills, you were at one time sheriff of Boise County?

A. Yes, sir.

Q. Were you sheriff of Boise County during the time at which the Flato Commission Company foreclosed a mortgage upon certain sheep alleged to belong to R. L. Shaw?

A. Yes, sir.

Q. As such sheriff and did you act in such matter?

A. Yes, sir.

Q. You are the party then who was the defendant in the case of Ralph Cowden vs. J. C. Mills, Jr., Sheriff of Boise County?

A. Yes, sir.

Q. You may state who first called your attention to the matter of foreclosure and desired your action in the premises?

A. Mr. Hawley.

Q. In what respect did he call your attention, by letter or by telephone?

A. By telephone.

Q. Did he afterwards furnish you the papers upon which to proceed to foreclosure?

A. Yes, sir.

(Testimony of J. C. Mills, Jr.)

Q. I will ask you to state, Mr. Mills, if these papers which I now hand you are the papers in the foreclosure proceedings which you have referred to in the foreclosure of the chattel mortgage of the Flato Commission Company at the request of Mr. Hawley? (Handing witness papers.)

A. Yes, sir.

Q. These are the papers then constituting your authority to proceed in that foreclosure matter?

A. Yes, sir.

Q. An affidavit which was furnished you by Mr. Hawley?

A. Yes, sir.

Q. And these papers you afterwards caused to be filed

A. Yes, sir.

Q. And your return upon that affidavit of foreclosure? with the clerk of the Court?

A. Yes, sir.

By Mr. BORAH.—We now offer these in evidence.

(By Mr. NEAL.)

Q. Are those all the papers you received from Mr. Hawley or any other person? I mean, of course, in relation to this matter?

A. Well, I have received letters from him.

Q. Who were the letters signed by?

A. Signed by Mr. Hawley.

Q. Was not there a notice in with those directing you to do certain things?

A. Yes.

(Testimony of J. C. Mills, Jr.)

By Mr. BORAH.—I have that notice, we will produce it.

By Mr. NEAL.—The defendants and each of them object to the above offer for the reason that it is not shown that there is any privity between these defendants and the plaintiff in this action, and for that reason the papers proposed to be introduced are not evidence of the liability against these defendants or either of them, and for that reason incompetent, irrelevant and immaterial.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "D.")

(By Mr. BORAH.)

Q. Did you receive in company with those papers the foreclosure affidavit and letter from Mr. Hawley?

A. Yes, sir.

Q. Of the firm of Hawley, Puckett & Hawley?

A. Yes, sir.

Q. (Paper handed witness.) You may state whether or not that is the letter which accompanied the foreclosure affidavit?

A. Yes, sir.

By Mr. BORAH.—We offer this letter in evidence.

By Mr. NEAL.—The same objection as last made.

By the COURT.—The same ruling.

(Same is admitted in evidence and marked Plaintiff's Exhibit "E.")

(Testimony of J. C. Mills, Jr.)

By Mr. NEAL.—Exception.

Q. Did a formal notice accompany this letter?

A. Yes, sir.

Q. You may state whether or not that is the notice which accompanied the letter?

A. It was.

By Mr. BORAH.—We offer this in evidence.

By Mr. NEAL.—Same objection.

By THE COURT.—Same ruling.

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "F.")

Q. There is a bond referred to in that letter. You may state whether or not the paper handed you is the bond that is referred to in the letter.

A. It is.

Q. This is the original bond?

A. Yes, sir.

Q. The bond which was sued upon in this action?

A. Yes, sir.

By Mr. BORAH.—We now offer in evidence the original bond.

By Mr. NEAL.—To which defendants and each of them object for the reason that the bond proposed to be introduced in evidence is a bond not authorized by the State of Idaho, and that the giving of such bond is contrary to the policy of the law of the State of Idaho, and it is, for those reasons, incompetent, irrelevant and immaterial.

(Testimony of J. C. Mills, Jr.)

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(The same is admitted in evidence and marked Plaintiff's Exhibit "G.")

Q. Now, Mr. Mills, I notice in the letter which Mr. Hawley sent to you he states that Mr. Bree will appear as the agent of the Flato Commission Company and meet you at Lardo. Did Mr. Bree meet you there?

A. Yes, sir.

Q. Did Mr. Bree remain with you until you took possession of those sheep, which were afterwards involved in the litigation between Cowden and yourself?

A. Yes, sir.

Q. Who was with you then as the representative of the Flato Commission Company pointing out the sheep which you were to take possession of at the time you took possession of them?

A. Mr. Bree.

Q. How long did Mr. Bree remain with you?

A. All during the time I had the sheep advertised.

Q. Was he there at the time of the sale of the sheep?

A. Yes, sir.

Q. To whom were the sheep sold?

A. To the Flato Commission Company.

Q. Who bought them in for the Flato Commission Company?

A. Mr. Bree.

Q. The same party who is referred to in the letter of

(Testimony of J. C. Mills, Jr.)

Mr. Hawley and who met you at Lardo in the first instance?

A. Yes, sir.

Q. Now, are these the same sheep then which were afterwards involved in the controversy between Mr. Cowden and yourself?

A. They are.

Q. Mr. Cowden afterwards brought suit against you?

A. Yes, sir.

By Mr. NEAL.—Defendants and each of them object for the reason before given, that it is not shown there is any privity in the contract, or otherwise, between Ralph Cowden and the defendants in this case.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

Q. When that suit was filed were papers served on you?

A. Yes, sir.

Q. To whom did you send the papers as attorney?

By Mr. NEAL.—Same objection.

A. Mr. Hawley.

Q. Whose attorney was he?

A. Flato Commission Company.

Q. Did you at that time or about the time the suit was brought serve any notice of the bringing of the suit upon the agent of the American Bonding Company?

A. I did.

Q. You may state whether or not the paper handed you

(Testimony of J. C. Mills, Jr.)

is the notice which you have referred to as having served upon the agent of the American Bonding Company?

A. It is.

By Mr. BORAH.—We offer in evidence the notice which Mr. Mills gave the American Bonding Company of the suit, dated August 29, 1903.

By Mr. NEAL.—To which the defendants and each of them object for the reason that the purported notice is not such a notice as is contemplated by law, and is for that reason incompetent, irrelevant and immaterial, it being no more than such information as may have been gleaned from a newspaper.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "H.")

Q. That is your signature, Mr. Mills? (Referring to paper just introduced.)

A. Yes, sir.

Q. Now, when these papers were served upon you in the case of Cowden vs. Mills, to what attorneys did you send the papers?

A. Mr. Hawley.

Q. As whose attorney?

A. Flato Commission Company's.

Q. Who prepared the answer in this case for you?

A. Mr. Hawley.

Q. Who had charge of the case as attorneys?

(Testimony of J. C. Mills, Jr.)

A. Mr. Hawley.

Q. Do you know Judge Van Dusen?

A. Well, I met him at Caldwell.

Q. Of Omaha?

A. Yes.

Q. Was he present at the trial of the case?

A. Yes, sir.

Q. Did he appear as your attorney?

A. No, sir.

Q. Did you employ any attorneys in this case at all as a matter of defense?

A. No, sir.

Q. Who employed the attorneys?

A. The Flato Commission Company.

Q. Was there an appeal of this case to the Supreme Court?

A. There was.

Q. Whose attorney had charge of the appeal?

A. The Flato Commission Company's.

Q. Did you at any time employ counsel at any stage of this litigation, or was the matter in the hands of the attorneys employed by the Flato Commission Company?

A. I didn't employ any lawyers at all.

By Mr. BORAH.—In this connection we offer in evidence the remittitur from the Supreme Court affirming the appeal of the judgment.

By Mr. NEAL.—We make the same objection.

By the COURT.—The objection is overruled.

(Testimony of J. C. Mills, Jr.)

By Mr. NEAL.—Exception.

Q. Has the judgment in the case of Ralph Cowden versus J. C. Mills, Jr., been paid, or any part of it?

A. No, sir, it has not.

Q. It is still standing there as a demand against you?

A. Yes, sir.

By Mr. BORAH.—Now, we desire to offer in evidence a letter from the General Attorney of the American Bonding Company acknowledging receipt of the notice.

By Mr. NEAL.—We make the same objection that we made to the introduction of the Mills letter.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(The same is admitted in evidence and marked Plaintiff's Exhibit "J.")

By Mr. BORAH.—We now offer in evidence a copy of a letter which was identified upon the former trial—in the State Court, rather—wherein this notice was transmitted to the Bonding Company.

By Mr. NEAL.—Same objection as to the preceding.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "K.")

By Mr. BORAH.—I desire to offer in evidence now a letter from Mr. Smith, the General Attorney, addressed to myself, which was introduced in the former case.

By Mr. NEAL.—We make the general objection.

(Testimony of J. C. Mills, Jr.)

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(The same is admitted in evidence and marked Plaintiff's Exhibit "L.")

Cross-examination.

(By Mr. NEAL.)

Q. Mr. Mills, I believe you stated you had some conversation with Mr. Hawley over the phone?

A. Yes, sir.

Q. When was this conversation over the phone with reference to the time you received the papers?

A. Well, I should think it was on the 26th of July.

Q. That is the day you had the talk with him?

A. Yes, sir.

Q. What time of day did you have that talk?

A. About ten o'clock, I think, as near as I remember.

Q. Did you have any conversation at that time with reference to the matter of a bond?

A. Yes, sir.

Q. Did he call you up or you him?

A. He called me up.

Q. For what purpose did he call you up?

A. He told me he wanted me to foreclose a chattel mortgage upon a certain band of sheep.

Q. Did he tell you who claimed them and who had given the mortgage?

A. Yes, sir.

(Testimony of J. C. Mills, Jr.)

Q. And in reply to that request what did you tell him?

A. What about?

Q. When he told you what he wanted you to do?

A. He told me he would send these papers up and wanted me to start as soon as possible after I received them.

Q. When he told you he would send up an affidavit and notice of the foreclosure of a mortgage given by R. L. Shaw to the Flato Company, you told him all right to send it along?

A. Yes, sir.

Q. You made no other request of him or any demand on him at all?

A. No, sir, I did not.

Q. Did you receive the affidavit and notice before you received the bond?

A. No, sir, I received them all in the same letter—same envelope.

Q. Did you receive any affidavit and notice prior to that time?

A. I did not.

Q. Did you have any conversation prior to that time with reference to an affidavit and notice?

A. Prior to what time?

Q. Well, the 26th of July.

A. No, I did not receive them on the 26th.

Q. When did you receive them?

(Testimony of J. C. Mills, Jr.)

A. Well, I think on the 27th,—the next day, if I remember right.

Q. You made a demand that there should be a bond of indemnity did you not?

A. No, sir.

Q. Was it a voluntary act on the part of Mr. Hawley to offer you a bond?

A. Yes, sir.

Q. How do you come to allege in the complaint in this case that you received an affidavit and notice and levied on a band of sheep, and thereafter demanded a bond?

By Mr. BORAH—We don't say, "and thereafter demanded a bond." We admit that we allege that we demanded a bond.

Q. When did you demand a bond, Mr. Mills?

A. I didn't demand any bond.

Q. You swore to this complaint in this court, didn't you? I mean when it was filed in the District Court?

A. Yes.

Q. Which statement is correct, the statement in the complaint or the statement you make here?

A. I can state the conversation I had with Mr. Hawley.

Q. Very well.

A. He called me up and told me he wanted me to foreclose a certain chattel mortgage on some sheep, and that he would send the bond up with some papers by another party, and he mentioned that party as Mr. Cowden. That

(Testimony of R. A. Cowden.)

is the substance of the conversation. I made no demand whatever for the bond. He simply told me he would send it up with the papers, and for me to foreclose.

Q. This Mr. Bree who was there, where is he now?

A. I don't know. I heard he was dead.

Reirect Examination.

(By Mr. BORAH.)

Q. The conversation which you had with Mr. Hawley in the first instance was on the 26th?

A. Yes, sir.

Q. The papers followed in due course of mail thereafter?

A. Yes, sir.

Q. Upon the 26th, he first mentioned to you what he wanted you to do?

A. Yes, sir.

Q. Over the telephone?

A. Yes, sir.

Q. And stated that he would send the bond as there would be a claim by another party for the sheep?

A. Yes, sir.

(Witness excused.)

R. A. COWDEN, duly called, sworn and examined, testified as follows:

(Testimony of R. A. Cowden.)

Direct Examination.

(By Mr. BORAH.)

Q. You are the party who was plaintiff in the case, the record of which has been introduced in evidence, of Cowden vs. Mills?

A. Yes, sir.

Q. And the party who claimed the sheep Mr. Mills took possession of on the foreclosure of the Flato Commission Company?

A. Yes, sir.

Q. And you afterwards brought suit for the value of those sheep?

A. Yes, sir.

Q. That is the suit that is referred to?

A. Yes, sir.

Q. Has the judgment in that case been satisfied or any part of it paid?

A. No, sir.

Q. It is still uncollected?

A. Yes, sir.

Q. It is still due and owing to you then as the plaintiff in that case?

A. Yes, sir.

Cross-examination. (Waived by defendants.)

(Witness excused.)

At this time plaintiff rests.

By Mr. NEAL.—Defendants and each of them move to strike out such portions of the testimony of J. C. Mills, Jr., as relates to the giving of the bond, for the reason that it is at variance with the pleadings in this case, the allegations of the pleadings being that they received the papers, levied, and thereafter demanded a bond; proof having been offered that they were given at the same time and received by him at the same time.

By the COURT.—The motion is overruled.

By Mr. NEAL.—Exception.

By Mr. MORRISON.—We wish to interpose or give notice of a demurrer to the evidence at this point.

By the COURT.—I think you have already done that.

By Mr. MORRISON.—We have, but we wish to specify more particularly. The defendants and each of them demurrer to the evidence adduced, for the reason that it does not establish or tend to establish facts sufficient to constitute a cause of action against the defendants or either of them. It shows first, that the bond was demanded and given in a case where the sheriff was fully protected by a process fair upon its face, and one which it was his duty under the law to execute; second, that there was a failure of any notice to the American Bonding Company sufficient to make the alleged judgment recovered against the plaintiff binding against said company. Third, that the bond upon which this action was brought was taken in a case in which the sheriff was

unauthorized by statute or by any law to demand a bond and the taking was contrary to the policy of the law.

By the COURT.—The demurrer is overruled.

By Mr. MORRISON.—To which the defendants and each of them except.

By Mr. NEAL.—We desire to offer in evidence the deposition of Ed. H. Reed.

In ruling upon Mr. Neal's offer to introduce the deposition of Ed. H. Reed, the Court said: "In this case the Flato Commission Company, was the principal and the American Bonding Company was the surety. I hold that it is bound by the judgment as rendered in the first trial, and that the evidence offered here, in so far as it tends to establish a different value for the sheep than that found in the State Court, cannot be regarded as evidence, and will be excluded. Now, if there is anything in the evidence applicable to other issues of the case I will not rule upon it. I only rule as to the evidence that has been discussed here—the evidence that tends to contradict the value of the sheep as found in the State Court; and the motion to that extent is sustained.

By Mr. NEAL.—We understand from the ruling, then, that we are precluded from putting in any evidence which goes to value?

By the COURT.—Any evidence that changes the value as found in the trial previously had in the State Court.

By Mr. NEAL.—Then the only question which we can put in evidence is the question of extortion in the procurement of the bond? We plead that the bond was extorted. Is that precluded also by the ruling on the other?

By the COURT.—That is not connected with this matter. I have no ruling to make upon that; there is no offer of that kind?

By Mr. NEAL.—No, sir. We make an offer of these various depositions and take the Court's ruling.

By the COURT.—The ruling on that is that the depositions in so far as they would tend to contradict the value as found in the State Court, the judgment in the State Court will be sustained—that is, the motion to that extent will be sustained.

By Mr. NEAL.—All the depositions go to the point of ownership except Reed's.

By the COURT.—The ruling is that they shall be excluded, and you can take your exceptions.

By Mr. NEAL.—We offer the deposition of John R. Bonson, O. W. Eaton, Geo. W. Hawkes and the deposition of James C. Dahlman. And we also offer the testimony of C. J. Dressler and Ed. Paine to prove the following facts: First, that Ralph Cowden was not the owner of the sheep in controversy and that they were the property of R. L. Shaw, mortgagor. Second, that whatever interest, if any, Ralph Cowden acquired or had in the sheep in controversy was attained with the actual knowledge of the fact that they were mortgaged to the Flato Commission Company by R. L. Shaw and that they were his property. Third, that the judgment in the case of Cowden against Mills, which is pleaded in the complaint in this action, is excessive and does not show the true value of

the sheep, and that the true value of said sheep was at said time not in excess of \$14,000, and that that was the total amount of damages to the Plaintiff under the circumstances. Which facts defendants offer to establish by the depositions which have just been tendered and by the oral testimony of said defendant Paine and C. J. Dressler.

By Mr. BORAH.—As far as the offer of the depositions are concerned our objections to them are all in writing and of record, and the depositions all relate to the questions of value or ownership, both of which questions were adjudicated in the judgment in the case of Cowden versus Mills. Therefore, we will rest on our objections to the depositions—on the written objections. As to the objections to the testimony of these witnesses, we object to that for the reason that it is incompetent, irrelevant and immaterial, as it relates to matters and things which were adjudicated and determined by the judgment in the case of Cowden vs. Mills, and for the further reason that the judgment in the case of Cowden vs. Mills is conclusive upon all questions of ownership and value and is binding upon these defendants.

By the COURT.—I have already ruled upon the objections to the depositions, and I repeat the ruling and make the same ruling as to the offer of the oral testimony; in other words, I sustain the objection that is now made to the offer.

By Mr. NEAL.—Give the defendants and each of them an exception.

We now offer the deposition of Ed. H. Reed.

By Mr. BORAH.—That relates to the question of what they term extortion. We have certain written objections to that deposition. But we are willing, if counsel are willing, that this deposition may be taken subject to these objections. The purport of this deposition is to the effect that Mr. Mills refused to levy, or, make the foreclosure, rather, until the bonds were given. This is a question which your Honor ruled upon once before.

By the COURT.—That goes to the point that the statute does not provide for a bond?

By Mr. BORAH.—Yes.

By the COURT.—I may as well rule upon that now without delay, so if that is the point of the deposition I will sustain the objection to the introduction of the deposition.

By Mr. NEAL.—The point in the testimony is to the question of extortion in obtaining the bond.

By the COURT.—You mean by that that he had no right to demand the bond?

By Mr. NEAL.—Yes.

By the COURT.—I hold that he had the right to demand the bond. If counsel objects to that on that ground I sustain the objection to the offer.

By Mr. NEAL.—Exception.

State of Idaho,
County of Ada,—ss.

I hereby certify that the above and foregoing transcript is a true, correct and complete copy of the oral evidence

in the above entitled case taken by me as stenographer in said case.

H. M. BRENNEN.

[Endorsed]: No. 249. U. S. Circuit Court, Central Division, District of Idaho. J. C. Mills, Jr., vs. American Bonding Company of Baltimore, et al. Testimony. Filed Nov. 28, 1905. A. L. Richardson, Clerk.

Plaintiff's Exhibit "C."

In the District Court of the Third Judicial District of the State of Idaho, in and for Boise County.

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., Sheriff of Boise
County, Idaho,

Defendant.

Complaint.

Comes, now, the plaintiff herein and for cause of action against the defendant alleges:

I.

That the defendant, J. C. Mills, Jr., now is and during all the times herein mentioned has been the duly elected, qualified and acting sheriff of the County of Boise, State of Idaho.

II.

That on the first day of July, 1902, in the county of Boise, State of Idaho, the plaintiff was the owner and in

possession and entitled to the possession and ever since said time has been and now is the owner and entitled to the possession of the following described chattels of the value of twenty-one thousand eight hundred and sixty-six and 50-100 (21,866.50) dollars, to wit: twenty-six hundred and twenty-nine head of ewes, branded \widehat{G} with black paint; also sixteen hundred and forty-five lambs branded \widehat{G} with black paint; also twenty hundred and eighty-eight head of mixed yearlings branded \widehat{G} with black paint, also branded H with red paint. Said sheep being known as the Cowden sheep.

III.

That defendant as sheriff of said county on the 1st day of August, 1902, in the county of Boise, State of Idaho, and at a time when the plaintiff was the owner and in possession and entitled to the possession of said property and all thereof and without the plaintiff's consent wrongfully took said goods and chattels from the possession of the plaintiff into the possession of the defendant.

IV.

That before the commencement of this action, to wit, on the — day of August, 1902, before the filing of this complaint, the plaintiff demanded the possession of said goods and chattels.

V.

That said defendant still unlawfully and without right withholds and denies said goods and chattels and all of the same from the possession of the plaintiff to his damage in the sum of twenty-one thousand eight hundred and

sixty-six and 50-100 (21,866.50) dollars, the value of the sheep and five thousand (5,000) dollars damages for the detention of the same.

Wherefore plaintiff prays judgment against the defendant:

First. For the recovery of possession of said goods and chattels or for the sum of twenty-one thousand eight hundred and sixty-six and 50-100 (21,866.50) dollars, the value thereof in case return cannot be had.

Second. For five thousand dollars damages and for costs of this suit.

W. E. BORAH and
FRANK J. SMITH,
Attorneys for Plaintiff.

State of Idaho,
County of Canyon,—ss.

Ralph Cowden, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the above and foregoing complaint and knows the contents thereof and that the same is true of his own knowledge.

RALPH COWDEN.

Subscribed and sworn to before me this 6th day of August, 1902.

FRANK J. SMITH,
Notary Public.

[Endorsed]: In the District Court of the Third Judicial District, State of Idaho, County of Canyon. Ralph

Cowden vs. J. C. Mills, Jr., Sheriff Boise County, Idaho. Complaint. Filed August 9th at 40 minutes past 10 o'clock, A. M. 1902. Joseph Penrod, Clerk District Court. W. E. Borah and Frank J. Smith, Attorneys for Plaintiff.

In the District Court of the Third Judicial District of Idaho, in and for Boise County.

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., Sheriff Boise County,
Idaho,

Defendant.

Demurrer.

Comes now the defendant and demurs to the complaint of the plaintiff herein, upon the grounds that said complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays to be hence dismissed with his costs in this behalf expended.

HAWLEY & PUCKETT,
Attorneys for Defendant.

Service of copy of above and foregoing demurrer admitted this 21st day of August, 1902.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: District Court, Third Judicial District,

County of Ada, State of Idaho. Ralph Cowden vs. J. C. Mills, Jr., Sheriff. Demurrer. Filed Dec. 20, 1902. J. H. Wickersham, Clerk. Filed August 22, 1902. Jos. Penrod, Clerk Dist. Court. Filed Feb. 18th, 1903. John A. Tucker, Clerk.

*In the District Court of the Third Judicial District of
Idaho, in and for Boise County.*

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., as Sheriff of Boise
County, Idaho,

Defendant.

Answer.

Comes now the above-named defendant, and by way of answer to the complaint of plaintiff filed herein, admits, denies and alleges as follows:

1st. Admits that the defendant now is, and during all the times mentioned in plaintiff's complaint has been the duly qualified and acting Sheriff of Boise County, Idaho.

2d. Denies that on the 1st day of July, 1902, or at any other time, either in the county of Boise in the State of Idaho, or elsewhere the said plaintiff was the owner in the possession, or entitled to the possession, or ever at any time since such day has been, or now is the owner, or entitled to the possession of the property and chattels mentioned in plaintiff's complaint, to wit, 2,629 head of ewes branded quarter circle G with black paint, and 2,069 head

of mixed yearlings branded quarter circle G with black paint and with red paint, or any part thereof, of the value of \$21,866.50 or the value of any other sum or amount, or at all.

3d. Denies that said defendant as sheriff, or otherwise, on the 1st day of August, 1902, or at any other time in the county of Boise, State of Idaho, or elsewhere at any time since, plaintiff was the owner or in the possession or entitled to the possession of said sheep or property, or all or any part thereof, without the plaintiff's consent wrongfully took said property or chattels, or any part thereof, from the possession of the plaintiff, or into the possession of this defendant, or otherwise.

4th. Denies that before the commencement of this action and on the — — day of August, 1902, or at any other time, or before the filing of this complaint, the plaintiff demanded possession of said property or chattels, or any part thereof.

5th. Denies that this defendant still, or otherwise, or unlawfully or without right, withholds or detains said property or chattels, or all or any part of the same from the possession of the plaintiff to his damage in the sum of \$21,866.50, or any other sum, either as the value of said sheep or otherwise, and denies that the said plaintiff has been damaged in the sum of \$21,866.50, or any other sum or amount as damages or otherwise, for the detention or any detention of said sheep, or any part thereof.

And for a further defense herein, the defendant alleges :

1st. That from and after the 30th day of November,

1901, the Flato Commission Company, a corporation, has been and now is the owner and holder of a certain chattel mortgage covering and including the property described in plaintiff's complaint herein, given by one R. L. Shaw to secure the payment to the said The Flato Commission Company, aforesaid, of the sum of \$18,626.55, together with the interest thereon as provided in said mortgage, which said sum has never been paid or any part thereof, and which said chattel mortgage was duly filed with the Recorder of Boise County, Idaho, on the 31st day of July, 1902, in Book 2 of Chattel Mortgages, at page 240, and which said chattel mortgage has never been paid, cancelled or satisfied, and is now and all the times since its execution, has been in full force and effect.

2. That on the — day of September, 1902, proceedings were commenced to foreclose such chattel mortgage under the provisions of Sections 3391 to 3398, inclusive, of Title XII of Chapter IV of the Revised Statutes of Idaho, and the amendments thereto.

3d. That pursuant to the provisions of such Statutes one George A. Hawkes who then was, and now is the agent of the said The Flato Commisison Company aforesaid, the said mortgagee made an affidavit stating the date of said mortgage, the names of the parties thereto, and a full description of the property mortgaged and the amount due thereon, together with a notice signed by said George A. Hawkes, agent of the mortgagee, requiring the said defendant as Sheriff of Boise County, to take the said property into the possession of the defendant and sell

the same, which said affidavit and notice were placed in the hands of said defendant as such sheriff.

4th. That said defendant as such sheriff, by virtue of such process and not otherwise, on the 1st day of August, 1902, duly levied upon and took into his possession the sheep mentioned in said complaint, the same being at the time of such levy in the possession of L. E. Hodson; and said defendant did on the 2d day of August, 1902, deliver to said L. E. Hodson, personally, a true copy of said affidavit, together with a notice signed by said Hawkes, setting forth a full description of said property, the amount claimed by virtue of said mortgage, and the time and place of selling said property.

5th. That said defendant as such officer, made due return of such affidavit, and all proceedings thereunder, and transferred the same to the clerk of said Court, in whose office the same is now on file; and thereafter in accordance with the provisions of the Revised Statutes of Idaho above stated, advertised said property mentioned in said complaint for sale at public auction, and on the 12th day of August, 1902, in pursuance of such affidavit and notice sold said property to the Flato Commission Company, who was the highest and best bidder therefor at such sale for the sum of \$14,233.50, and thereafter, in accordance with said provisions, issued and delivered to said The Flato Commission Company his certificate of sale therefor, and credited the amount bid therefor by the said The Flato Commission Company on said mortgage.

Wherefore, this defendant demands judgment against said plaintiff,

1st. That plaintiff take nothing by his complaint herein;

2nd. That defendant have judgment for his costs and disbursements in this behalf expended.

HAWLEY & PUCKETT,
Attorneys for Defendant.

State of Idaho,
County of Ada,—ss.

James H. Hawley, being first duly sworn, deposes and says: That he is one of the attorneys for the defendant in the above-entitled action, and in that capacity makes this affidavit; that he has read the above and foregoing answer and knows the contents thereof and that the same is true of his own knowledge; that the reason this affidavit is made by affiant instead of the defendant in person is, that the defendant is absent from this Ada County, the residence of this affiant and his said attorney.

JAMES H. HAWLEY.

Subscribed and sworn to before me this 7th day of January, 1903.

[Seal]

G. G. ADAMS,
Notary Public.

Service of the above answer by copy admitted this 13th day of Jan., 1903.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: In the District Court of the Third Judicial District of Idaho, in and for Boise County. Ralph Cowden vs. J. C. Mills, Jr., as Sheriff of Boise County, Idaho. Answer. Filed Jany. 13, 1903. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Filed Feby. 18th, 1903. John A. Tucker, Clerk.

In the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County.

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., Sheriff,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 2d day of April, 1903, before the Court, without a jury—a jury having been duly waived by the parties, and Frank Smith and W. E. Borah appearing as attorneys for the plaintiff and Hawley and Puckett and James H. Van Dusen appearing as attorneys for the defendant, and from the facts introduced the court finds the facts as follows, to wit:

1. That the defendant, J. C. Mills, Jr., during all the times mentioned in the complaint was the duly elected, qualified and acting sheriff of the County of Boise, State of Idaho.

2. That on August 1, 1902, and at all times mentioned in the complaint the plaintiff was the owner and entitled

to the possession of certain sheep in number 6,342; that upon said date the defendant wrongfully and without the consent of the plaintiff took said sheep from the plaintiff's possession; that the value of said property at the time of taking was \$18,091.30; that demand was duly made for the return of said property prior to the filing of the complaint in the above action, that such return was refused and that the sheep were afterwards sold by the defendant at public sale.

3. That the defendant in taking possession of said sheep was acting under and by virtue of a certain chattel mortgage dated November 30th, 1901, executed by R. L. Shaw individually to the Flato Commission Company and purporting to cover 3,500 head of yearling wethers, 3,500 head of ewes, 3,500 head of mixed lambs and wool, described in said mortgage as being located about twelve or fifteen miles south of Boise City, Ada County, Idaho; that at the time of the execution of said mortgage the said sheep in question in this suit were in Canyon County, Idaho, and were then located there; that said mortgage was never filed or recorded in Canyon County, and was not filed or recorded in Boise County until August —, 1902.

4. That said mortgage was not verified, was executed by R. L. Shaw individually and did not upon its face purport to cover other than individual property.

5. That the sheep taken possession of by the defendant were sheep formerly belonging to Cowden and Gowan and in which said Shaw at no time had any interest; that

said Cowden purchased Gowan's interest in said sheep June 10, 1902.

6. That at the time of the purchase of said sheep by Cowden from Gowan the said plaintiff had no actual knowledge of the existence of said mortgage above referred to, and that the same was not upon record either in Canyon County or Boise County at the time of said purchase; that said mortgage did not cover any of the sheep taken possession of by the defendant in this suit; that at the time of the purchase by Cowden from Gowan of his interest the said sheep were in Boise County, Idaho.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts the Court finds that said mortgage is void as to this plaintiff and was never a lien upon the property taken by the defendant.

Second, that the plaintiff is entitled to judgment for the return of said property, to wit: 6,342 head of sheep branded quarter circle G, black paint, or in case return cannot be had, to judgment against the defendant for the value thereof in the sum of \$18,091.30, and with interest thereon at the rate of seven per cent per annum from August 1, 1902, amounting to \$1,104.57, total, principal and interest \$19,195.87 and for costs of suit, and it is ordered that judgment be entered accordingly.

GEO. H. STEWART,

Judge.

Dated June 17th, 1903.

[Endorsed]: District Court, Third Judicial District, State of Idaho, County of Canyon. Ralph Cowden, Plaintiff.

iff, vs. J. C. Mills, Jr., Sheriff, Defendant. Findings. Filed June 20th, 1903. John A. Tucker, Clerk. W. E. Borah and Frank J. Smith, Attys. for Plaintiff.

In the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County.

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., Sheriff,

Defendant.

Judgment by the Court.

This cause came on regularly for trial on the 2d day of Apr., 1903, Frank Smith and W. E. Borah appearing as counsel for plaintiff and Hawley and Puckett and James H. Van Dusen for the defendant. A trial by jury having been expressly waived by the respective parties the cause was tried before the Court without a jury, whereupon witnesses upon the part of the plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties, and the evidence being closed the cause was submitted to the Court for consideration and decision, and after due deliberation thereon the Court files its findings and decision in writing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that Ralph Cowden, the plaintiff, is entitled to recover the possession and

return of the property in question, to wit, 6,342 head of sheep branded quarter circle G, black paint, or in case return cannot be had it is ordered, adjudged and decreed that said plaintiff Cowden have judgment against the defendant, J. C. Mills, Jr., Sheriff, for the value of said property in the sum of \$18,091.30, with interest thereon at the rate of seven per cent per annum from August 1, 1902, amounting to \$1,104.57, total, principal and interest, \$19,195.87, and for costs of suit and disbursements incurred in this action amounting to the sum of \$145.14.

Dated June 17, 1903.

GEO. H. STEWART,
Judge.

[Endorsed]: District Court, Third Judicial District, County of Canyon, State of Idaho. R. A. Cowden, Plaintiff, vs. J. C. Mills, Jr., Sheriff of Boise County, Defendant. Judgment. Filed June 20, 1903. John A. Tucker, Clerk. W. E. Borah and Frank Smith, Attorneys for Plaintiff.

[Endorsed]: In the District Court, Third Judicial District, County of Canyon, State of Idaho. Judgment-Roll. Ralph Cowden, Plaintiff, vs. J. C. Mills, Jr., Sheriff of Boise County, Idaho, Defendant. Filed June 20, 1903. John A. Tucker, Clerk. Plaintiff's Exhibit "C." Filed June 3, 1905.

Plaintiff's Exhibit "E."

Boise, Idaho, July 26th, 1902.

J. C. Mills, Sheriff Boise County, Idaho City, Idaho.

Dear Sir: We send you bond for twenty thousand dol-

lars in the usual form, and the statutory affidavit and notice, in a foreclosure of chattel mortgage against certain sheep, in favor of the Flato Commission Company. Please attend to this matter at once. Mr. Bree, an agent of the company, will meet you at Lardo, and give you full instructions. You understand the Statutory method without doubt, and therefore we do not think it necessary to explain the matter to you. We hope you can get started on Monday, as time is precious in this matter.

Enclosures.

Yours very truly,

HAWLEY & PUCKETT.

No. 249. Plaintiff's Exhibit "E." Filed June 3d, 1905.

Plaintiff's Exhibit "F."

Copy.

To J. C. Mills, Sheriff of Boise County, Idaho.

You are hereby required to take into your possession the mortgaged property described in the annexed affidavit, and to sell the same according to law.

THE FLATO COMMISSION COMPANY,

By ED. H. REED,

Director, Agent and Representative.

HAWLEY & PUCKETT,

Attorneys for Plaintiff, the Flato Commission Company.

Plaintiff's Exhibit "F." Filed June 3, 1905.

Plaintiff's Exhibit "G."

INDEMNITY BOND OF FORECLOSURE OF CHATTEL MORTGAGE.

Know all men by these presents, that we, the Flato Commission Company of Omaha, Nebraska, as principal, and The American Bonding and Trust Company of Baltimore, Md., as surety, are each held and firmly bound, unto J. C. Mills, Sheriff of Boise County, Idaho, in the sum of (\$20,000.00) twenty thousand dollars, lawful money of the United States. To be paid to J. C. Mills, Sheriff, or his certain Attorney, executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th of July, 1902.

Whereas, under and by virtue of an affidavit on the foreclosure of a chattel mortgage given by one R. L. Shaw to the above-named Flato Commission Company, and the notice required by the statutes of Idaho for the foreclosure of chattel mortgages, directed and delivered to the said J. C. Mills, sheriff of Boise County, the said sheriff was directed to take into his possession the said mortgaged property and to sell the same, and the said sheriff did thereupon take into his possession the following described property, to wit:

Between six and seven thousand sheep branded with G (quarter circle G),

And whereas, upon the taking of said sheep, other persons or person claimed the said property as their own, and

Whereas, the said Flato Commission Company, notwithstanding such claim, requires that the said J. C. Mills, sheriff, that he shall retain said property in his possession and sell the same.

Now therefore, the conditions of this obligation is such that if the said Flato Commission Company of Omaha, and the American Bonding and Trust Company of Baltimore City, Md., sureties, their heirs, executors, administrators or successors, or either of them, shall well and truly indemnify and save harmless the said J. C. Mills, sheriff, his heirs, executors and administrators, of and from all damage, expense, costs and charges, and against all loss and liability which he, the said sheriff, his heirs, executors or administrators shall sustain, or in any wise be put to for or by reason of the taking into his possession, retention and sale of said property, claimed as aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.

THE FLATO COMMISSION COMPANY,

By ED. H. REID,

Director, Agent, and Representative.

Principal.

THE AMERICAN BONDING AND TRUST
COMPANY OF BALTIMORE CITY,

By H. E. NEAL,

Vice-President.

[Seal] Attest: CHARLES F. NEAL,

Asst. Secty.

Plaintiff's Exhibit "G." Filed June 3, 1905.

Plaintiff's Exhibit "H."

Idaho City, Idaho, August 29, 1902.

Mr. Charles F. Neal, Agent for the American Bonding and Trust Co.

Dear Sir: You are hereby notified that suit has been brought against me as sheriff of Boise County, Idaho, to recover the sum of \$21,866.50, together with \$5,000.00 damages for selling the sheep mentioned in the foreclosure of a certain chattel mortgage, wherein The Flato Commission Company is plaintiff and R. L. Shaw is defendant, and to which your company have agreed to indemnify me as Sheriff in the sum of \$26,000.00.

Very respectfully,

J. C. MILLS.

Plaintiff's Exhibit "H." Filed June 3, 1905.

Plaintiff's Exhibit "I."

In the Supreme Court of the State of Idaho.

December Term, A. D. 1903.

RALPH COWDEN, Sheriff,

Plaintiff and Respondent,

vs.

J. C. MILLS, JR., Sheriff,

Defendant and Appellant.

On an Appeal from the District Court of the Third Judicial District in and for Canyon County.

Judgment.

This cause having been heretofore heard, submitted and taken under advisement by the Court, and the Court having fully considered the same, now on this day the cause was again called, and the decision of the Court is delivered by Justice Ailshie to the effect that the judgment and the order denying a new trial by the Court below be affirmed.

It is therefore considered, adjudged and decreed by the Court that the judgment and the order refusing a new trial of the District Court of the Third Judicial District in and for the County of Canyon, in the above-entitled cause, be and the same hereby is affirmed, costs are awarded to the respondent.

I, Sol. Hasbrouck, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the foregoing is a true copy of the original judgment entered in the above-entitled cause, on the 13th day of February, A. D. 1904, and now remaining of record in my office.

Witness my hand and seal of the Court affixed at my office this 13th day of Feb., 1904.

[Seal]

SOL. HASBROUCK,

Clerk.

Plaintiff's Exhibit "I." Filed June 3, 1905.

Plaintiff's Exhibit "J."

Denver, Colo, 9-6-1902.

Mr. Chas. F. Neal, Agent, Boise, Idaho.

Dear Sir: I have yours of the 3d instant in the matter

of bond furnished to the Flato Commission Company, together with letter written by J. C. Mills, advising you that suit has been brought against him in the sum of about \$27,000 on account of the sale of certain sheep mentioned in the collateral mortgage.

For our files, have Hawley & Puckett advise us in writing that they are looking after the interests of the sheriff on behalf of the Flato Commission Company. Inasmuch as the Flato Commission Company have a very high financial rating, I assume there will be no actual liability against this company.

Very truly yours,

RALPH W. SMITH,
V. P. and Gen'l Att'y.

Dictated S.—H.

Plaintiff's Exhibit "J." Filed June 3d, 1905.

Plaintiff's Exhibit "K."

Sept. 3, 1902.

No. 315.

R. W. Smith, Esqr., Denver, Colorado.

Dear Sir: In matter of bond furnished Flato Commission Co. indemnifying J. C. Mills, sheriff of Boise County, herewith I hand you notice of the sheriff to the effect that defendants have brought suit against him. Can say Messrs. Hawley & Puckett, Attorneys for the Flato Com-

mission Company, are looking after the interests of the sheriff. I herewith hand you the notice.

Very truly yours,

-----,
General Agent.

Plaintiff's Exhibit "K." Filed June 3, 1905.

Plaintiff's Exhibit "L."

Denver, Colorado, April 18, 1904.

W. E. Borah, Esqr., Boise, Idaho.

Dear Sir:

Re Flato Commission Company.

I have your letter of April 14th and I cannot see from the investigation I have made concerning these cases that we are liable under the obligations which were executed, one on the 26th of July, 1902, the other on the 22d of July, 1902. I am investigating the law in relation to the issues involved but will not indicate at this time that I can give you a definite answer for several days. From such examination as I have made I believe that this company is not liable upon the bonds of indemnity mentioned. However, I am writing you at this time so that you can take such action as you feel proper in the premises.

Very truly yours,,

RALPH W. SMITH,
Vice-Pres't and Gen'l Atty.

Plaintiff's Exhibit "L." Filed June 3, 1905.

Transcript of Judgment.

JUDGMENT DOCKET, DISTRICT COURT, CANYON
COUNTY,

JUDGMENT DEBTOR.

J. C. Mills, Jr., Sheriff
Boise County, Idaho.

JUDGMENT CREDITOR.

Ralph Cowden.

TIME OF ENTRY,

June 20, 1903, book 2, page 120.

Judgment, amount.....	\$19,195.87
Costs.....	145.15
Supreme Court Costs.....	77.05

Appeal taken Oct. 28, 1903.

Remittitur filed March 8th, 1904. Judgment and order denying a new trial by the District Court affirmed, costs awarded to respondent.

RALPH COWDEN,

Plaintiff,

vs.

J. C. MILLS, JR., Sheriff Boise County,
Idaho,

Defendant.

Office of the Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Canyon County,—ss.

I, Clerk of said Court, do hereby certify that the above and foregoing is a full, true and correct transcript of the

original judgment docket in the above-entitled action of said District Court in and for Canyon County, State of Idaho.

Attest my hand and the seal of said court this 19th day of December, 1905.

[Seal]

JOHN A. TUCKER,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

J. C. MILLS, Late Sheriff of Boise County
Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organized
and Existing Under and by Virtue of the
Laws of the State of Maryland, and
THE FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,
Defendants.

Findings and Decision of Court.

This cause came on regularly for trial upon the 3d day of June, 1905, at a regular term of the above-named Court. A jury having been expressly waived in writing and entered upon the minutes of the Court, the case was tried before the Court without a jury, F. J. Smith, H. L. Fisher

and W. E. Borah appearing as attorneys for plaintiff, and Morrison & Pence and Neal & Kinyon appearing as attorneys for the defendants, and from the evidence introduced the Court finds the facts as follows, to wit:

1. That upon the 26th day of July, 1902, the defendant, The Flato Commission Company, made an affidavit for the foreclosure of a chattel mortgage upon certain sheep described in said affidavit and delivered said affidavit together with a proper order and notice to foreclose said chattel mortgage as required by the statutes of the State of Idaho, to J. C. Mills, sheriff of Boise County, Idaho.

2. That at the time of delivering said affidavit of foreclosure and notice as aforesaid, the Flato Commission Company as principal and the other defendant herein, the American Bonding Company of Baltimore, as surety, made, executed and delivered to said plaintiff, then sheriff of Boise County, Idaho, a certain bond of indemnity, a copy of which is attached to the complaint herein and which bond of indemnity is introduced in evidence herein as Plaintiff's Exhibit "G."

3. That said sheriff in company with one Bree, the agent of the Flato Commission Company, took possession of certain sheep under and by virtue of said chattel mortgage, advertised the same for sale and the same were sold to the defendant herein, the Flato Commission Company, all of which more fully appears by the sheriff's return in said foreclosure proceedings as shown by exhibit "D," introduced in evidence herein.

4. That one Ralph Cowden made claim to be the owner of the sheep taken into possession of said sheriff under and by virtue of said foreclosure proceedings and sold as aforesaid, and thereafter on the 9th day of August, 1902, commenced an action in the District Court of the Third Judicial District of the State of Idaho in and for Boise County against the plaintiff herein, J. C. Mills, for the recovery of the possession of said sheep or the value thereof. The said action was removed to Canyon County, Idaho, for trial, and that trial was thereafter had and such proceedings as resulted in a judgment in favor of the plaintiff therein, one Ralph Cowden against J. C. Mills, Late Sheriff of Boise County, the above named plaintiff, for the sum of \$19,195.87, principal and interest, and for \$145.15, costs, said judgment bearing date June 17, 1903, all of which proceedings are more fully set forth and disclosed by the judgment roll introduced in evidence herein as exhibit "C."

5. That upon the filing of said suit aforesaid, the plaintiff herein, J. C. Mills, gave notice to the defendant herein, the American Bonding Company of Baltimore, of the commencement of said suit as shown by Plaintiff's Exhibit "H," introduced in evidence herein.

6. That thereafter such proceedings were had in the case of Ralph Cowden vs. J. C. Mills, sheriff of Boise County, that an appeal was taken to the Supreme Court of the State of Idaho, and that thereafter such further proceedings were had as are more particularly shown by

the remittitur in said cause which is introduced in evidence herein as Plaintiff's Exhibit "I."

7. That counsel who appeared for the sheriff in the case above named, Ralph Cowden vs. J. C. Mills, sheriff, were not employed by the said J. C. Mills, but that the counsel of the defendant, the Flato Commission Company, as such, had charge of the defense in said cause and of the appeal in said cause.

8. That the sheep which were taken possession of by said J. C. Mills and sold under foreclosure proceedings as aforesaid was the same property which was involved in the litigation and for which Ralph Cowden secured judgment against said J. C. Mills as aforesaid.

9. That no part of said judgment in the case of Ralph Cowden vs. J. C. Mills, sheriff as aforesaid, has been paid or satisfied, and that the same now stands as a judgment against said J. C. Mills, sheriff.

10. That the name by which said bond was signed, to wit, The American Bonding and Trust Company of Baltimore City, is the same company or corporation as the American Bonding Company of Baltimore, said name having been changed as shown by its articles of incorporation on file with the secretary of State of the State of Idaho by act of the legislature from the name of the American Bonding and Trust Company of Baltimore City to the American Bonding Company of Baltimore.

11. That the amount now due upon the judgment in the case of Ralph Cowden vs. J. C. Mills aforesaid, and

for which said J. C. Mills, late sheriff of Boise County, is liable is \$21,976.21.

As a conclusion of Law from the foregoing facts the Court finds that the plaintiff is entitled to a judgment against the defendants, and each of them, for the sum of \$21,962.21, lawful money of the United States, and costs of this suit, and it is ordered that judgment be entered accordingly.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 249. U. S. Circuit Court, Central Division, District of Idaho. J. C. Mills, Jr., vs. American Bonding Co. of Baltimore, et al. Findings. Filed June 5, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

J. C. MILLS, Late Sheriff of Boise
County,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF

BALTIMORE, a Corporation Organized and Existing Under and by Virtue of the Laws of the State of Maryland, and THE FLATO COMMISSION COMPANY, a Corporation Organized and Existing Under and by Virtue of the Laws of the State of Nebraska,

Defendants.

Judgment by the Court.

This cause came on regularly for trial upon the 3d day of June, 1905, at a regular term of the above-named Court. A jury having been expressly waived in writing and entered upon the minutes of the Court, the cause was tried before the Court without a jury, F. J. Smith, H. J. Fisher and W. E. Borah appearing as attorneys for plaintiff, and Morrison & Pence and Neal & Kinyon attorneys for defendants.

Whereupon witnesses were duly sworn and examined and documentary evidence introduced, and the evidence being closed the cause was submitted to the Court for consideration and decision, and after due deliberation thereon the Court files its findings and decision in writing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that the plaintiff, J. C. Mills, late sheriff of Boise County, do have and recover of and from the American Bonding Company of Baltimore, a corporation, and the Flato Commission Company, a corporation, the sum of \$21,976.21, with interest thereon at the rate of seven per cent per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of \$50.40.

JAS. H. BEATTY,
Judge.

Done in open court.

[Endorsed]: No. 249. U. S. Circuit Court, Central Division, District of Idaho. J. C. Mills, Jr., vs. American Bonding Co. of Baltimore, et al. Judgment. Filed June 5, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the District
of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
and the FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

Notice of Motion for New Trial.

To J. C. Mills, Jr., Late Sheriff of Boise County, Idaho,
Plaintiff, and W. E. Borah and Frank J. Smith, his
Attorneys of Record:

You will please take notice that defendants, The Amer-
ican Bonding Company of Baltimore and Flato Com-
mission Company, and each of them, intends to move the

Court to grant a new trial of said cause, upon the following grounds, to wit:

I.

Irregularity in the proceedings of the Court, in that the Court ordered a trial in this cause and tried the same, after the adjournment of the regular March, A. D. 1905, Term of said Court and prior to the beginning of the next succeeding term of said Court.

II.

Accident and surprise which ordinary prudence could not have guarded against.

III.

Newly discovered evidence, material to the defense of this cause, which defendants nor either of them could with reasonable diligence have discovered and produced at the trial.

IV.

Excessive damages.

V.

Insufficiency of the evidence to justify the findings of fact and decision.

VI.

That such decision is against law.

VII.

Errors in law occurred at the trial and duly excepted to by the defendants and by each of them.

Said motion will be made upon affidavits, upon the records and the files in this action and upon a statement

of the case, and bill of exceptions, hereafter to be prepared and served on you and filed in this case.

MORRISON & PENCE and
NEAL & KINYON,

Attorneys for Defendants, American Bonding Company of Baltimore, and Flato Commission Company, for each of whom this notice is given.

Due service of within notice, with copy, admitted this 24th day of June, 1905.

-----,
Attorneys for Plaintiff.

State of Idaho,
County of Ada,—ss.

C. L. Lingenfelter, being first duly sworn, deposes and says:

That on Saturday, June 24th, 1905, at 3:30 P. M., he served the within notice of intention to move for a new trial, upon W. E. Borah, one of the attorneys for the above-named plaintiff, by leaving a true copy thereof with Charles McCarthy, the clerk found in charge of the office of said W. E. Borah.

CHARLES L. LINGENFELTER.

Subscribed and sworn to before me this 24th day of June, 1905.

[Seal]

B. F. NEAL,
Notary Public.

[Endorsed]: No. 249. U. S. Circuit Court, Central Division, District of Idaho. *J. C. Mills, Jr., vs. American Bonding Co. et al.* Notice of Motion for New Trial. Filed June 24th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation, etc.,
et al.

Defendants.

Notice.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal & Kinyon and Messrs. Morrison &
Pence, its Attorneys:

You will please take notice that the undersigned, the
American Bonding Company of Baltimore (a corpora-
tion), desires, and is about to prosecute proceedings in
the above-entitled action, in the matter of a writ of error

herein, for a review by the Circuit Court of Appeals of the United States in and for the Ninth Circuit, of the proceedings heretofore had herein, and desires, and is about to do and perform each and every necessary act of things whatsoever, in and about the prosecution of such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, is you so desire.

AMERICAN BONDING COMPANY OF BAL-
TIMORE,

By JESSE W. LILIENTHAL,
Vice-President.

Dated August 26, 1905.

Due service of the within notice by copy, is admitted this 30th day of August, 1905.

NEAL & KINYON,
MORRISON & PENCE,

Attorneys for Flato Commission Company, a Corporation.

[Endorsed]: No. 249. In the Circuit Court of the United States, Ninth Circuit, for the District of Idaho, Central Division. J. C. Mills, Jr., late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore, a Corporation, etc., et al., Defendants. Notice. Filed Sept. 8th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation, etc.,
et al.,

Defendants.

Notice of Intention.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal & Kinyon and Messrs. Morrison &
Pence, its Attorneys:

You will please take notice that the undersigned, the American Bonding Company of Baltimore (a corporation), desires, and is about to prosecute proceedings in the above-entitled action, in the matter of a writ of error herein, for a review by the Circuit Court of Appeals of the United States in and for the Ninth Circuit, of the proceedings heretofore had herein, and desires, and is about to do and perform each and every necessary act of thing whatsoever, in and about the prosecution of such proceedings.

tice of Intention, etc. Filed Oct. 14th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

THE AMERICAN BONDING COM-
PANY OF BALTIMORE, a Corpora-
tion, et al.,

Defendants.

Objections to Proposed Bill of Exceptions.

Comes now the plaintiff and objects to the settlement or allowance of the proposed bill of exceptions heretofore filed in the above-entitled cause, and for grounds of said objection says:

1st.

Said bill of exceptions was not presented, served or filed during the term of the Court at which the said action was tried and the judgment entered.

2d.

That said bill of Exceptions was not served or filed within any time prescribed by law, or by the order of this court, or by any stipulation or agreement between counsel.

3d.

That said bill of exceptions was not served and filed until more than three months after the adjournment of the term

of court sine die, at which said cause was tried and judgment entered, and for more than three months after the time extended for making and filing said bill of exceptions.

4th.

That said bill of exceptions was not filed and served until after the appeal in this case was taken, and until after six months had elapsed from the entry of judgment in the above cause.

W. E. BORAH,
Attorney for Plaintiff, Boise, Idaho.

[Endorsed]: Filed Dec. 12th, 1905. A. L. Richardson,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

THE AMERICAN BONDING COM-
PANY OF BALTIMORE, a Corpora-
tion, et al.,

Defendants.

**Affidavit in Support of Objections to Proposed Bill of Excep-
tions.**

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That

he is and has been from the commencement of the litigation, one of the attorneys for the above-named plaintiff, and as such attorney is familiar with the facts herein stated, and has also taken the precaution to review the record as to dates before making this affidavit. Affiant states that the judgment in the aboveentitled cause was signed, made and entered of record June 5, 1905; that the defendant has taken a stipulation for sixty days, in which to serve and file a bill of exceptions, but that no order of the Court was ever made upon said stipulation; that said stipulation provided that the sixty days should run from notice of entry of judgment; that notice was given of the entry of said judgment to the attorneys for defendants June, 5, 1905; that upon June 24, 1905, after entry of said judgment, defendants' attorneys served notice in writing of a motion for new trial; that on June 15th, 1905, attorneys for plaintiff served written notice for settlement of the cost bill; that thereafter the above stipulation referred to with reference to serving and filing a bill of exceptions, was extended by stipulation until August 19, 1905, but that no order was ever made at any time by the court; that the time for serving and filing a bill of exceptions was never extended, by stipulation or otherwise, in any manner at all, after the 19th day of August, 1905, and that the time for defendants to serve and file a bill of exceptions expired August 19th, 1905; that the term of Court at which the judgment in the aboveentitled cause was rendered, adjourned sine die August 17, 1905; that upon December 2, 1905, the defendants filed

a petition for a writ of error, the assignments of error, the order allowing appeal and the bond on appeal; that on December 4, 1905, they filed a purported bill of exceptions with the clerk of the Court; that no service of said bill of exceptions upon counsel for plaintiff was made until December 11, 1905; that said purported bill of exceptions was filed and served more than three months after the adjournment of the above term of court sine die, and after the time for filing the same as extended by the stipulation aforesaid, and that the same was filed without any authority from the Court, or without any stipulation, or order permitting or allowing the same.

And further affiant saith not.

W. E. BORAH.

Subscribed and sworn to before me this 12th day of December, 1905.

[Seal]

JOHN J. BLAKE,
Notary Public.

[Endorsed]: Filed Dec. 12, 1905. A. L. Richardson,
Clerk.

At a Stated Term of the Circuit Court of the United States, for the District of Idaho, Held at Boise, Idaho, on Monday, the 18th day of Dec., 1905. Present: Hon. JAS. H. BEATTY, Judge.

J. C. MILLS, Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation.

No. 249.

Order Refusing to Settle Bill of Exceptions.

On this day was announced the decision of the Court upon the plaintiff's objections to the settlement of defendants' proposed bill of exceptions herein, heretofore argued and submitted, ordered that said objections be and the same are hereby sustained. To which ruling the defendant American Bonding Company, excepted in due form of law.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

No. 249.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation, Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
and FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

Petition for Writ of Error.

Now comes the American Bonding Company of Balti-
more, one of the defendants herein, and says that on the

5th day of June, 1905, judgment was entered herein in favor of plaintiff and against this defendant, for the sum of twenty-one thousand nine hundred and seventy-six and 21-100 dollars, and costs of action, and that in the said judgment and the proceedings had prior thereto, in this cause, certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the assignment of errors herein.

Wherefore said defendant prays that a writ of error may issue in its behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that the transcript of the records and the papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals; and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

And your petitioner will ever pray.

Dated 2d of December, 1905.

NEAL & KINYON,
MORRISON & PENCE,
JESSE W. LILIENTHAL,
Attorneys for said Defendant.

[Endorsed]: No. 249. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Cen-

tral Division. *J. C. Mills, Jr.*, Late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company, of Baltimore, et al., Defendants. Petition for Writ of Error. Filed Dec. 2d, 1905. A. L. Richardson, Clerk. Neal & Kinyon, Morrison & Pence and Jesse W. Lilienthal, Attorneys for Defendant, American Bonding Co.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
and the FLATO COMMISSION COM-
PANY, a Corporation, Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

Assignment of Errors.

The defendant, the American Bonding Company of Baltimore, in this action, in connection with its petition for a writ of error herein, makes the following assignments of error which it avers occurred:

I.

The Court erred as to said defendant, in overruling the

demurrer of said defendant to plaintiff's complaint herein.

II.

The Court erred as to said defendant, in ordering judgment to be entered in favor of the plaintiff and against said defendant for the sum of twenty-one thousand nine hundred and seventy-six and 21-100 dollars and the costs of this action, and in ordering judgment in any amount whatever, against said defendant.

III.

The Court erred as to said defendant, in entering judgment in favor of the plaintiff herein, against said defendant.

IV.

The Court erred as to said defendant, in overruling the objection by said defendant to the admission of any evidence herein, upon the ground that the complaint herein does not state facts sufficient to constitute a cause of action against this defendant.

V.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the judgment-roll offered in evidence during the examination of the witness Tucker, the full substance whereof is as follows: Said judgment-roll consists of the proceedings in the District Court of the Third Judicial District of the State of Idaho, in and for Boise County, in an action wherein Ralph Cowden was plaintiff and J. C. Mills, Jr., as Sheriff of Boise County, Idaho, was defendant, and consists

(1) Of complaint praying for the possession of certain sheep alleged to have been converted by said defendant as such sheriff, or for the value thereof, and for damages and costs;

(2) Of demurrer to such complaint;

(3) Of answer to such complaint, wherein defendant justified the taking of said property and the sale thereof under and by virtue of certain proceedings for the foreclosure of a chattel mortgage embracing said property, given by one R. L. Shaw to secure the payment to the Flato Commission Company of the sum therein mentioned, together with interest and costs.

That said proceedings were commenced under the provisions of Secs. 3391 to 3398 inclusive, of Title 12, Chap. 4 of the Revised Statutes of Idaho, and are based on an affidavit and notice given by George A. Hawkes as the Agent of said Flato Commission Company.

That said property was in said proceedings sold to said Commission Company for \$14,233.50.

(4) Of findings of fact and conclusions of law in said action.

(5) Of judgment by said Court in favor of plaintiff, and against defendant for the possession of the property therein referred to, or in case return could not be had, then for judgment for the sum of \$18,091.30, together with \$1,104.57 interest and \$145.15 costs.

VI.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence

of the entry from the judgment docket during the examination of the witness Tucker, the full substance whereof is as follows:

“Judgment Debtor, J. C. Mills, Jr., Sheriff Boise County, Idaho. Judgment Creditor, Ralph Cowden. Amount, \$19,195.87. Costs, \$145.15. Time of entry, June 20, 1903. Page of Judgment Book, book 2, page 120.”

VII.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the papers marked Plaintiff's Exhibit “D,” offered in evidence during the examination of the witness J. C. Mills, Jr., whereof the full substance is as follows:

(1) An affidavit by George W. Hawkes, as the agent and representative of the Flato Commission Company, to the effect that on November 30, 1901, at South Omaha, Nebraska, one R. L. Shaw made and delivered to said corporation his promissory note for \$10,000, and his further promissory note for \$8,626.55, together with a certain chattel mortgage for the purpose of securing said notes, on 3,500 head of yearling wethers and wool, 3,500 head of ewes, their increase and wool, 3,000 head of mixed lambs and wool, describing, with the marks thereon, and further stating that the date of maturity of each of said notes is past, that no portion of the principal or interest has been paid, and that there is due to said corporation from said Shaw on said notes and mortgages, the sum of \$18,626.55, with interest.

(2) The return of said Mills as sheriff, of said affi-

davit of foreclosure, wherein he states that on August 1, 1902, he took into his possession certain of the property described in said affidavit, and on August 12, 1902, sold certain of said property to the Flato Commission Company for the sum of \$14,233.50, whereof after deducting commissions, the remainder, \$13,871.59, was paid by him to said company.

VIII.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "E," offered in evidence during the examination of the witness J. C. Mills, Jr., whereof the full substance is as follows:

A letter from Hawley & Puckett, attorneys, to J. C. Mills, Sheriff Boise County, dated July 26th, 1902, enclosing bond for \$20,000 sued on herein, and statutory affidavit and notice in a foreclosure of chattel mortgage against certain sheep in favor of the Flato Commission Company, and requesting that the matter be attended to at once; said affidavit and notice being those referred to under Assignments Nos. V and VII hereinbefore stated.

IX.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "F," offered in evidence during the examination of the witness J. C. Mills, Jr., the full substance whereof is, a notice to said Mills as sheriff of Boise County, from the Flato Commission Company, by its agent, directing him to take into

his possession the mortgaged property described in the affidavit already referred to, and to sell the same according to law.

X.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "G," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was, an indemnity bond by said Flato Commission Company as principal, and the American Bonding and Trust Company of Baltimore, Md., as surety, to said Mills as sheriff of Boise County, Idaho, in the sum of \$20,000.00, dated July 26th, 1902, reciting that whereas by virtue of the affidavit already referred to, said sheriff was directed to take into his possession the property mortgaged by said Shaw, and to sell the same, and thereupon took into his possession certain property, and whereas upon such taking other persons or person claimed said property, and said Flato Commission Company required that said Mills, as sheriff, retain and sell the same, that said principal and surety would indemnify said Mills, such sheriff, of and from all damages, expense, costs and charges, and against all loss and liability which said sheriff should sustain by reason of his taking, retention and sale of said property, said bond being that annexed to the complaint herein as exhibit "A."

XI.

The Court erred as to said defendant, in overruling said defendant's objection to the question, "Mr. Cowden

afterwards brought suit against you?" asked of said witness J. C. Mills, Jr.

XII.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "H," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter by said J. C. Mills to Charles F. Neal, as agent for said American Bonding and Trust Company, dated August 29, 1902, notifying him, said Neal, that suit had been brought against said Mills, as sheriff, to recover said sum of \$21,866.50, and damages for the sale of said sheep under the foreclosure already referred to.

XIII.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the remittitur from the Supreme Court during the examination of the witness J. C. Mills, Jr., which in full substance was a remittitur from the Supreme Court of the State of Idaho, announcing the affirmance of the judgment and order denying a new trial in the case of Cowden vs. Mills already referred to.

XIV.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "J," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter from Ralph

Smith as Vice-President and General Attorney of the American Bonding and Trust Company of Baltimore City, to Charles F. Neal, Agent, Boise, Idaho, acknowledging receipt of letter written by Mills to Neal, already referred to.

XV.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "K," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter from said Neal, as general agent, to R. W. Smith, Denver, Colorado, enclosing notice from Mills to Neal already referred to.

XVI.

The Court erred as to said defendant in overruling said defendant's objection to the admission in evidence of the paper marked Plaintiff's Exhibit "L," offered in evidence during the examination of the witness J. C. Mills, Jr., which in full substance was a letter from Ralph W. Smith as Vice-President and General Attorney of the American Bonding Company of Baltimore, to W. E. Borah of Boise, Idaho, denying defendant's liability upon the indemnity bond to J. C. Mills, Jr., said bond being that annexed to the complaint herein as exhibit "A."

XVII.

The Court erred as to said defendant, in denying and overruling said defendant's motion to strike out such portions of the testimony of the witness J. C. Mills, Jr., as related to the giving of the bond in suit.

XVIII.

The Court erred as to said defendant in overruling said defendant's demurrer to the evidence.

XIX.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of Ed. H. Reed, the full substance whereof was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Mills as sheriff, and that said bond was without consideration, and void.

XX.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of John H. Bonson, the full substance whereof was to the effect first, that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, of the sheep alleged to have been converted by said Mills as such sheriff, second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant.

plaintiff's objection to the admission in evidence of the

XXI.

The Court erred as to said defendant, in sustaining

deposition of O. W. Eaton, the full substance whereof was to the effect, first, that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, of the sheep alleged to have been converted by said Mills as such sheriff; second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant.

XXII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Mills as sheriff, and that said bond was without consideration and void.

XXIII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of James C. Dahlman as to the value of sheep therein referred to, the full substance of which said evidence so rejected was to the effect that the value of the sheep alleged to have been converted was an amount smaller than that found by the District Court of the Third Judicial District of the State of Idaho, in the action en-

titled Ralph Cowden, plaintiff, vs. J. C. Mills, Jr., Sheriff, etc., defendant, said bond being that annexed to the complaint herein as exhibit "A."

XXIV.

The Court erred as to said defendant, in sustaining plaintiff's objection to said defendant's offer to prove by the testimony of J. C. Dressler, first, that Ralph Cowden was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; second, that whatever interest Ralph Cowden had or acquired in the sheep in controversy was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; third, that the judgment in the case of Cowden versus Mills was excessive and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500, and that that amount is the total amount of damages of all sorts caused in the premises, if any.

XXV.

The Court erred as to said defendant, in sustaining plaintiff's objection to said defendant's offer to prove by the testimony of Ed Paine, first, that said Ralph Cowden was not the owner of the sheep in controversy and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; second, that whatever interest Ralph Cow-

den had or acquired in the sheep in controversy was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; third, that the judgment in the case of Cowden vs. Mills was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500.00 and that amount is the total amount of damages of all sorts caused in the premises, if any

NEAL & KINYON,
MORRISON & PENCE,
JESSE W. LILIENTHAL,
Attorneys for said Defendant.

[Endorsed]: No. 249. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Central Division. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company, of Baltimore, and Flato Commission Company, Defendants. Assignment of Errors. Filed Dec. 2d, 1905. A. L. Richardson, Clerk. Neal & Kinyon, Morrison & Pence and Jesse W. Lilienthal, Attorneys for Defendant, Amer. Bond. Co. of Baltimore.

At a Stated Term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on the 2d day of December, 1905. Present: JAS. H. BEATTY, Judge.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

No. 249.

AMERICAN BONDING COMPANY OF
BALTIMORE, et al.,

Defendants.

Order for Filing Bond.

The defendant, American Bonding Company of Baltimore, a corporation, having this day filed its petition for a writ of error from the decision and judgment thereon made and entered herein, to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which said defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and said petition having this day been duly allowed:

Now, therefore, it is ordered, that upon the said defendant, American Bonding Company of Baltimore, filing with the clerk of this court a good and sufficient bond in the sum of twenty-three thousand (\$23,000.00) dollars, to the effect, that if the said American Bonding Company of Baltimore, plaintiff in error, shall prosecute the said writ of error to effect, and answer all damages and costs if it

fail to make its plea good, then the said obligation is to be void, else to remain in full force and virtue, the said bond to be approved by the Court, that all further proceedings of this Court be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated Dec. 2d, 1905.

JAS. H. BEATTY,
Judge.

*In the Circuit Court of the United States of America,
Ninth Judicial Circuit, District of Idaho,
Central Division.*

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of Idaho, Central Division, held at its Courtroom in the City of Boise, State of Idaho, on the 2d day of December, One Thousand Nine Hundred and Five. Present: The Honorable J. H. BEATTY, District Judge, District of Idaho, Designated to hold and holding said Circuit Court.

AT LAW.

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

No. 249.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue

of the Laws of the State of Maryland,
and FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

Order Allowing Writ of Error.

Upon motion of Messrs. Neal and Kinyon, Messrs. Morrison & Pence, and Jesse W. Lilienthal, Esq., attorneys for the defendant the American Bonding Company of Baltimore, and upon filing a petition for a writ of error and an assignment of errors, it is

Ordered that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the judgment heretofore entered herein, and the other matters and things in said petition and assignment set forth, and that the amount of the bond on said writ or error be, and hereby is fixed at twenty-three thousand (\$23,000.00) dollars.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 249. Order Allowing Writ of Error.
Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

Bond on Writ of Error.

Know all men by these presents, That we, American Bonding Company of Baltimore, a corporation, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto J C. Mills, Jr.,

in the full and just sum of twenty-three thousand dollars, to be paid to the said J. C. Mills, Jr., his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this second day of December, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States, for the Central Division, State of Idaho, in a suit depending in said Court, between said J. C. Mills, Jr., plaintiff, and said American Bonding Company of Baltimore and others, defendants, and numbered 249 on the Register of said Court, a judgment was rendered against the said American Bonding Company of Baltimore and the said American Bonding Company of Baltimore having obtained from said Court a writ of error to reverse the said judgment in the aforesaid suit, and a citation directed to the said J. C. Mills, Jr., citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now, the conditions of the above obligation is such, that if the said American Bonding Company of Baltimore shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else in full force and virtue.

Acknowledged before me the day and year first above written.

AMERICAN BONDING COMPANY OF BAL-
TIMORE,

[Seal]

By NEAL & KINYON,
Its Attorneys.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

[Seal]

By SHERMAN G. KING,
Its Attorney in Fact.

State of Idaho,
County of Ada,—ss.

On this 2d day of December, 1905, before me, Walter S. Walker, a notary public in and for said county, personally appeared Sherman G. King, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of the Fidelity and Deposit Company of Maryland, and acknowledged to me that he subscribed the name of the Fidelity and Deposit Company of Maryland thereto as principal and his own name as attorney in fact.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate above written.

[Seal]

WALTER S. WALKER,
Notary Public.

[Endorsed]: No. 249. Bond on Writ of Error. Form of bond and sufficiency of sureties approved. Jas. H.

Beatty, Judge. Filed Dec. 2d, 1905. A. L. Richardson,
Clerk.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the
Judges of the Circuit Court of the United States for
the Ninth Circuit, District of Idaho, Central Division,
Greeting:

Because, in the record and proceedings, as also in the
rendition of the judgment of a plea which is in the said
Circuit Court, before you, or some of you, between Amer-
ican Bonding Company of Baltimore, a corporation,
plaintiff in error, and J. C. Mills, Jr., defendant in error,
a manifest error hath happened, to the great damage of
the said American Bonding Company of Baltimore,
plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should
be duly corrected, and full and speedy justice done to the
parties aforesaid in this behalf, do command you, if judg-
ment be therein given, that then under your seal, distinctly
and openly, you send the record and proceedings afore-
said, with all things concerning the same, to the United
States Circuit Court of Appeals for the Ninth Circuit,
together with this writ, so that you have the same at the
City of San Francisco, in the State of California, on the
30th day of December, 1905, in the said Circuit Court of
Appeals, to be then and there held, that the record and pro-
ceedings aforesaid being inspected, the said Circuit Court

of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and five.

[Seal]

A. L. RICHARDSON,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, District of Idaho, Central Division.

Allowed by

JAS. H. BEATTY,

Judge.

Service of within writ and receipt of a copy thereof is hereby admitted this 2d day of December, 1905.

Without waiver of any rights in the premises.

W. E. BORAH,

Attorney for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the District of Idaho, Central Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

-----,
Clerk.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, clerk of the United State Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of writ of error in case of 249, J. C. Mills, Jr., Sheriff, vs. The American Bonding Co., et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said court in said District this 26th day of January, 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 249. Circuit Court of the United States, Ninth Circuit, District of Idaho, Central Division. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho, Defendant in Error. Copy. Writ of Error. Filed Dec. 2, 1905. A. L. Richardson, Clerk.

— — — —
Citation.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to J. C. Mills, Jr.,
Late Sheriff of Boise County, Idaho, Greeting:
You are hereby cited and admonished to be and appear

at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Idaho, Central Division, wherein the American Bonding Company of Baltimore, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. H. BEATTY, United States District Judge for the District of Idaho, Central Division, this 2d day of December, A. D. 1905.

JAS. H. BEATTY,
United States District Judge.

Due service of within citation, by copy, admitted this 2d day of December, A. D. 1905, without waiver of any rights in the premises.

W. E. BORAH,
Attorney for J. C. Mills, Jr., Defendant in Error.

UNITED STATES OF AMERICA—ss.

District of Idaho,—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of citation in case, No 249, J. C. Mills, Jr., Sheriff, vs. The American Bonding Co., et al., has been

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Virtue
of the Laws of the State of Maryland,
and the FLATO COMMISSION COM-
PANY, a Corporation Organized and
Existing Under and by Virtue of the
Laws of the State of Nebraska,

Defendants.

Notice.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal & Kinyon and Messrs. Morrison &
You will please take notice that the undersigned, the
Pence, its Attorneys:

American Bonding Company of Baltimore (a corpora-
tion), desires, and is about to, prosecute proceedings in
the above-entitled action, in the matter of a writ of error
herein, for a review by the Circuit Court of Appeals of
the United States, in and for the Ninth Circuit, of the pro-
ceedings heretofore had herein, and desires, and is about
to do and perform each and every necessary act of thing
whatsoever, in and about the prosecution of such pro-
ceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, if you so desire.

Dated August 26th, 1905.

AMERICAN BONDING COMPANY OF BALTIMORE,

By JESSE W. LILIENTHAL,

Vice-President.

Due service of the within notice by copy is admitted this 30th day of August, 1905.

NEAL & KINYON,

MORRISON & PENCE,

Attorneys for Flato Commission Company, a Corporation.

[Endorsed] : No. 249. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Central Division. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore, a Corporation, etc., et al., Defendants. Notice. Filed Sept. 8th, 1905. A. L. Richardson, Clerk.

United States of America,

District of Idaho,—ss.

I, A. L. Richardson, Clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of Notice in Case No. 249, J. C. Mills, Jr., Late Sheriff of Boise Co., Idaho, vs. American Bonding Co. of Baltimore, et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said court in said District this 12th day of June, 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

J. C. MILLS, JR., Late Sheriff of Boise
County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organized and Existing Under and by Virtue of the Laws of the State of Maryland, and the FLATO COMMISSION COMPANY, a Corporation Organized and Existing Under and by Virtue of the Laws of the State of Nebraska,

Defendants.

Notice of Intention, etc.

To the Flato Commission Company (a Corporation), and to Messrs. Neal & Kinyon and Messrs. Morrison & Pence, its Attorneys:

You will please take notice that the undersigned, the American Bonding Company of Baltimore, (a corporation), desires, and is about to, prosecute proceedings in the above-entitled action, in the matter of a writ of error herein, for a review by the Circuit Court of Appeals of

the United States, in and for the Ninth Circuit, of the proceedings heretofore had herein, and desires, and is about to do and perform each and every necessary act of thing whatsoever, in and about the prosecution of such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, if you so desire.

Dated August 26th, 1905.

AMERICAN BONDING COMPANY OF BALTIMORE,

By JESSE W. LILIENTHAL,
Vice-President.

State of Nebraska,
County of Douglas,—ss.

Joseph R. Wells, of lawful age, being duly sworn, makes oath and says that he served the within notice upon the Flato Commission Company by delivering a true copy thereof to its Secretary, James C. Dahlman, in South Omaha, Nebraska, on the 2d day of October, 1905.

JOSEPH R. WELLS.

Subscribed in my presence and sworn to before me this 2d day of October, 1905.

[Seal]

GEO. L. WHITMORE,
Notary Public.

Due service of the within notice by copy is admitted this 2d day of October, 1905.

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Secretary of Flato Commission Co.

[Endorsed] : No. 249. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Central Division. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore, a Corporation, etc., et al., Defendants. Notice of Intention, etc. Filed Oct. 14, 1905. A. L. Richardson, Clerk.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of Notice of Intention, etc., in case No. 249, J. C. Mills Jr., Late Sheriff of Boise Co., Idaho, vs. American Bonding Co., et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 12th day of June, 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 1321. United States Circuit Court of Appeals for the Ninth Circuit. American Bonding Company of Baltimore, a Corporation, vs. J. C. Mills, Jr., Late Sheriff of Boise County, Idaho. Certified Copies of Notices to Appear, etc.

Filed Jun. 15, 1906.

F. D. MONCKTON,
Clerk.